SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 691

RAILWAY MAIL ASSOCIATION, APPELLANT,

vs.

EDWARD S. CORSI, AS INDUSTRIAL COMMISSIONER OF THE STATE OF NEW YORK, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW YORK

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IN SUPREME COURT OF NEW YORK, ALBANY COUNTY

RAILWAY MAIL ASSOCIATION, Plaintiff,

against

EDWARD S. CORSI, as Industrial Commissioner of the State of New York, and Nathaniel L. Goldstein, as Attorney-General of the State of New York, Defendants.

NOTICE OF APPEAL

To Dugan & Dugan, Attorneys for Plaintiff, 90 State Street, Albany, New York. And Albany County Clerk:

Please Take Notice, that the defendants above named (the defendant Edward S. Corsi having recently been appointed Industrial Commissioner and thus succeeded the former defendant, Michael J. Murphy, as Acting Industrial [fol. 3] Commissioner) hereby appeal to the Appellate Division, Third Department, from the order and judgment herein entered and filed in Albany County Clerk's office on November 24, 1943, and this appeal is from each and every part of such order and judgment.

November 30, 1943.

Nathaniel L. Goldstein, Attorney-General of the State of New York, Attorney for Defendants.

IN SUPREME COURT OF NEW YORK, ALBANY COUNTY

[Title omitted]

COMPLAINT

Plaintiff for a cause of action herein through Dugan & Dugan, its attorneys alleges as follows:

[fol. 4] 1. That the defendant, Frieda S. Miller, now is and was at the time herein stated the Industrial Commissioner of the State of New York duly appointed and acting and as such is the head of the Department of Labor under the Labor Law of the State of New York.

2. That the defendant, John J. Bennett, Jr., is the Attorney-General of the State of New York duly elected and acting as such; that under Section 62 of the Executive Law of the State of New York it is the duty of the Attorney-General to prosecute and defend all actions and proceedings in which the State is interested, and to have charge and control of all the legal business of the departments and bureaus of the State or of any office thereof which requires the services of an attorney or counselor.

3. That the plaintiff now is and was at all the times hereinafter mentioned a foreign corporation organized under the laws of the State of New Hampshire and having its principal office at the City of Portsmouth in said State of New Hampshire. That it is organized and established, among other purposes, to conduct the business of a fraternal beneficiary association for the sole benefit of its members and beneficiaries and not for profit.

4. That the other enumerated objects contained in the charter of the plaintiff are as follows: to promote closer social relationship among Railway Postal Clerks, to better enable them to perfect any movement that may be for their [fol. 5] benefit as a class or for the benefit of the Railway Mail Service; to provide relief for its members and their beneficiaries and make provision for the payment of benefits to them in case of death, sickness, temporary or permanent physical disability, either as a result of disease, accident or old age.

5. That for the purpose of administering the business and fraternal affairs of the Railway Mail Association there are established and maintained a National Association, Division Associations and Branch Associations; that the Division Associations are established and maintained in areas in accordance with the division of the Railway Mail Service conducted by the United States of America and with Branch Associations established within the areas and jurisdictions of said Division Associations.

6. That under Article III of the Constitution of said Railway Mail Association membership therein is confined to regular male Railway Postal Clerks or male substitute Railway Postal Clerks of the United States Railway Mail Service who are of the Caucasian race or are native American Indians.

7. That appointments and promotions in the Railway Mail Service of the United States are made under and pursuant to the Civil Service Laws of the Government of the United States.

8. That the plaintiff carries on and conducts its business and fraternal affairs through the Division and Branch Associations aforesaid and with the permission of various [fol. 6] States of the United States, among which is the State of New York, and that within such State of New York there are established and maintained thirteen Branch Associations located in different parts of said State.

9. That under the Constitution of the plaintiff, Article IV, the National Convention of the plaintiff is the supreme executive, legislative and judicial body of the order and possesses and exercises the power to make a Constitution, laws, rules and regulations for the government of the National Association, and of all Division Associations and Branch Associations; and to annul, repeal, modify, revise and change the same from time to time; also to provide rules for the issuance of Charters to Division Associations and Branch Associations; and provide for its own support, and do all other legitimate acts proper or necessary to promote the welfare of the Railway Mail Association and to control its funds.

10. That said Constitution provides further that Division Associations and Branch Associations shall adopt a Constitution, by-laws, rules and regulations not inconsistent with the provisions of the plaintiff's Constitution, and may amend, repeal, modify, revise and change the same from time to time, and that no Division or Branch Constitution or amendment thereto shall become operative or in force until approved by the Executive Committee of the Railway Mail Association.

11. That the plaintiff by its Constitution provides for and selects an Executive Committee to conduct the business [fol. 7] and affairs of the plaintiff in the interim between National Conventions which Committee is the supreme executive and judicial body of the plaintiff during the period between holdings of its National Convention; that such National Conventions are appointed to be held biennially in the odd numbered years and that the last National Convention was held in October, 1941, and that no National

Convention is appointed to be held until 1943, and that said Executive Committee has authorized the commencement of this action for the purpose of having the rights of the plaintiff declared and established in the declaratory judgment sought herein.

12. That membership in the Railway Mail Association is comprised of two classifications; one of which is designated as general or non-beneficiary membership, and the other as beneficiary or full membership.

That the beneficiary members contribute to a benefit fund established by the levy upon said beneficiary members of assessments which benefit fund is created and maintained for the purpose of paying claims of such beneficiary members or their beneficiaries resulting from death or disability occasioned to said beneficiary members through external, violent and accidental means.

That the entire membership in the Railway Mail Association comprises upwards of 22,000 members, 99% of whom hold beneficiary or full membership in said Association.

[fol. 8] 13. That the Branch Associations of said Railway Mail Association have the right, subject only to the terms and limitations contained in the Constitution of the Railway Mail Association, to pass upon applications for and to elect and initiate applicants into membership in the Railway Mail Association.

14. That under the provisions of Article 20 of the Labor Law of the State of New York, being chapter 443 of the laws enacted in 1937, it is provided under Subdivision 5 of Section 701, that,

> "The term 'labor organization' means any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining, or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection and which is not a company union as defined herein."

15. That by Section 715 of the said Labor Law, it is provided that,

> "The provisions of this article shall not apply to the employees of any employer who concedes to and

agrees with the board that such employees are subject to and protected by the provisions of the National Labor Relations Act or the Federal Railway Labor Act, or to employees of the state or of any political or civil subdivision or other agency thereof, or to employees of charitable, educational or religious associations or corporations."

[fol. 9] 16. That by Chapter 9 of the Laws of the State of New York for the year 1940, Article 4, of the Civil Rights Law of the State of New York was amended by adding thereto a new section known as Section 43 which reads as follows:

"Discrimination by labor organizations prohibited. As used in this section, the term 'labor organization' means any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining, or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection. No labor organization shall hereafter, directly or indirectly, by ritualistic practice, constitutional or by-law prescription, by tacit agreement among its members, or otherwise, deny a person or persons membership in its organization by reason of his race, color or creed, or by regulations, practice or otherwise, deny to any of its members, by reason of race, color or creed, equal treatment with all other members in any designation of members to any employer for employment, promotion or dismissal by such employer."

17. That Section 41 of the Civil Rights Law of the State of New York now in force provides as follows:

"Any person who or any agency, bureau, corporation or association which shall violate any of the provisions of sections forty, forty-a, forty-b or forty-two or who or which shall aid or incite the violation of any [fol. 10] of said provisions and any officer or member of a labor organization, as defined by section forty-three of this chapter, or any person representing any organization or acting in its behalf who shall violate any of the provisions of section forty-three of this chapter or who shall aid or incite the violation of any

of the provisions of such section shall for each and every violation thereof be liable to a penalty of not less than one hundred dollars nor more than five hundred dollars, to be recovered by the person aggrieved thereby or by any resident of this state, to whom such person shall assign his cause of action, in any court of competent jurisdiction in the county in which the plaintiff or the defendant shall reside; and such person and the manager or owner of or each officer of such agency, bureau, corporation or association, and such officer or member of a labor organization or person acting in his behalf, as the case may be shall, also, for every such offense be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars, or shall be imprisoned not less than thirty days nor more than ninety days, or both such fine and imprisonment."

18. That by Section 45 of said Civil Rights Law, being Chapter 677 of the Laws of 1942 and effective on May 6, of said year, it is provided that:

[fol. 11] "The industrial commissioner may enforce the provisions of sections forty-two, forty-three and forty-four of this chapter. For this purpose he may use the powers of administration, investigation, inquiry, subpoena, and hearing vested in him by the labor law; he may require submission at regular intervals or otherwise of information, records and reports pertinent to discriminatory practices in industries."

19. That certain officers and members of Branch Association of the Second Division of the Railway Mail Association in the city of New York have indicated an attitude to accept membership in the Railway Mail Association by admitting applicants to membership in such Branch Association contrary to and in violation of Artiele III of the Constitution of plaintiff and have initiated correspondence with the defendant, Frieda S. Miller as Industrial Commissioner of the State of New York, and raised the question of the legal right of the plaintiff to insist upon the observance of the provisions of Article III of plaintiff's

Constitution within the State of New York; that said Industrial Commissioner has sought and received from the Attorney-General of the State of New York his advice to the effect that the plaintiff herein is a labor organization within the meaning and contemplation of Chapter 9 of the Laws of 1940 of the State of New York and comes within the purview of the Labor Law and the Civil Rights Law of the State of New York and that Article III of the plain-
[fol. 12] tiff's Constitution is invalid and unenforceable within the State of New York and that the plaintiff has no valid or legal right to deny to any applicant, otherwise duly qualified, membership in the plaintiff's organization by reason of his race, color or creed.

20. That acting upon such advice the defendant, Frieda S. Miller as said Industrial Commissioner of the State of New York, has requested the plaintiff to advise her for the completion of the official records on this matter in the office of the Commissioner of Labor of the future policy of the plaintiff's Branch Associations within the State of New York with reference to compliance with the Civil Rights Law and the Labor Law aforesaid.

21. That plaintiff has notified the defendant, Frieda S. Miller as such Industrial Commissioner of the State of New York, in reply to her request aforesaid that the Civil Rights Law and Labor Law aforementioned do not apply to the plaintiff or its Branch Associations and if sought to be applied would constitute and be a violation of the Constitution of the United States and the Constitution of the State of New York and further notified the said Commissioner of plaintiff's intention to bring action for a declaratory judgment of its rights and legal relations in the premises.

22. Upon information and belief plaintiff alleges that it is not a labor organization within the spirit or contemplation of the Labor Law or of the Civil Rights Law of the
[fol. 13] State of New York aforesaid but on the contrary is a membership corporation authorized to, and carrying on the business of a fraternal beneficiary association for the benefit of its members and their beneficiaries and not for profit.

That plaintiff draws its membership from male clerks engaged in the Railway Mail Service of the United States

Government; that such Railway Mail Service does not involve industrial enterprise; that appointments and promotions in such Railway Mail Service are regulated and controlled by the laws of the United States; that neither the plaintiff nor any of the male Railway Postal Clerks is engaged in industrial enterprise but its members are and constitute a class of Civil Service employees of the United States Government engaged in and conducting a governmental function exclusive to the Government of the United States and who possess certain peculiar rights and privileges to security and protection in such Government Service and have not the right to strike to enforce any grievance in relation to their service or employment in the Railway Mail Service.

23. That the defendant, Frieda S. Miller as such Industrial Commissioner of the State of New York, is asserting that the aforesaid provisions of the Labor Law and the amendments to the Civil Rights Law as aforesaid apply to and are controlling upon the plaintiff and its Division and Branch Associations and members within the State of New York, and that plaintiff is a labor organization within the [fol. 14] meaning of said statutes and that because thereof, Article III of the Constitution of plaintiff is invalid and without force or effect within the State of New York; that an actual controversy exists between the parties hereto as to their rights and legal relations arising out of and as to the application to plaintiff of the aforementioned Civil Rights and Labor Laws involving public interests, including the interest of the plaintiff, and it is necessary and expedient that the respective rights of the parties be determined without delay and that adequate relief is not presently available through other forms of action.

24. That the provisions aforesaid of the Civil Rights Law if sought to be applied against the plaintiff, its Division and Branch Associations and its members would be contrary to and violative of the provisions of Section 6 of Article 1 of the Constitution of the State of New York in that it would deny to the plaintiff and its members, and its Division and Branch Associations due process and equal protection of law and would be and constitute an unlawful and unreasonable abridgement of the property rights of the plaintiff and its Division and Branch Associations, and would offend the due process provisions of the Fifth and

Fourteenth Amendments of the Constitution of the United States in that said provisions of the Labor Law and of the Civil Rights Law of the State of New York would create arbitrary, capricious and unreasonable classifications, and would deny to the plaintiff and its members, and its Di- [fol. 15] vision and Branch Associations within the State of New York the equal protection of the laws and would deprive the plaintiff of its property without due process of law; and is an invasion of and in contravention to Subdivision 7 of Section 8 of Article I of the Constitution of the United States concerning the legislative power of the Congress of the United States to establish post offices and post roads.

25. That through the medium of an action for a declaratory judgment the issue of the plaintiff's legal rights and the legal rights of its members, and its Division and Branch Associations within the State of New York sought to be affected by procedure on the part of the defendant, Frieda S. Miller as the Industrial Commissioner of the State of New York can be expeditiously and finally determined and that plaintiff has no other adequate remedy at law.

Wherefore, the plaintiff demands judgment that this Court declare and determine as follows:

1. That Sections 41, 43 and 45 of the Civil Rights Law of the State of New York and the provisions of the Labor Law as now in existence have no application and do not apply to the plaintiff, Railway Mail Association, its members, and Division and Branch Associations, and that the Railway Mail Association is not a labor organization within the meaning or contemplation of such laws.

[fol. 16] 2. That if sought to be applied to the plaintiff herein such laws are in contravention to the Constitution of the United States, Article I, Section 8, Subdivision 7, and of Articles Fifth and Fourteenth of the amendments to said Constitution and to the provisions of Section 6 of Article 1 of the Constitution of the State of New York.

3. That this Court declare and determine the rights of the parties, not herein otherwise specifically asked.

4. And for the further and consequential relief that the Industrial Commissioner of the State of New York be enjoined from taking any action or procedure against the

plaintiff or its Division or Branch Associations within the State of New York, or the officers or members thereof, and for such other and further relief as may be legal and equitable in the premises with costs.

Dugan & Dugan, Attorneys for Plaintiff, Office and Post Office Address, 90 State Street, Albany, New York.

(Verified by John J. Kennedy as secretary-treasurer on December 23, 1942.)

[fol. 17] IN SUPREME COURT OF NEW YORK, COUNTY OF ALBANY

[Title omitted]

ANSWER

The defendants above named, for an answer to the complaint herein, plead as follows:

1. Defendants hereby deny that the definition of "Labor organization" set forth in paragraph fourteen of the complaint is applicable for any purpose except Article 20 of the Labor Law, and they further deny that it is applicable to the issues involved herein.

2. Defendants likewise deny that the statutory provision alleged in paragraph fifteen of the complaint is applicable to the issues involved herein.

3. Defendants deny each and every allegation of paragraph twenty-four of the complaint; and so much of paragraph twenty-two of the complaint as alleges that the plaintiff is not a labor organization within the spirit or contemplation of the Labor Law or of the Civil Rights Law of the State of New York.

[fol. 18] 4. Defendants lack knowledge or means of information as to the truth or falsity of the allegation contained in the second sentence of paragraph twenty-two of the complaint, and likewise as to certain allegations contained in other paragraphs of the complaint; and defendants believe that the allegations of paragraph two of the complaint are in certain immaterial respects too broad;

but for purposes of this litigation defendants admit all allegations of the complaint except those denied in the preceding paragraphs of this answer.

Wherefore, defendants demand judgment dismissing the complaint, with the costs and disbursements herein.

Nathaniel L. Goldstein, Attorney-General of the State of New York, Attorney for Defendants, The Capitol, Albany, N. Y.

(Verified by Henry S. Manley, Assistant Attorney-General, on May 28, 1943.)

In Supreme Court of New York, Albany County

Stipulation Presenting Issues to Special Term

It is hereby stipulated, between the parties herein, by their respective attorneys whose names are undersigned: [fol. 19] (1) That the issues arising between the Complaint and the Answer shall be submitted to a Special Term of this Court to be held in the City of Albany, New York, on the 24th day of September 1943, as though upon a motion by the plaintiff for summary judgment as prayed in the Complaint, and upon a cross-motion by the defendants that the Complaint be dismissed.

(2) That such submission shall be upon oral argument, and the primary briefs of each side shall be exchanged at the time of the original hearing; answering briefs shall be exchanged and submitted at such time as the Court may direct.

(3) That any decision made by the Court shall be subject to appeal or other action as fully as though presented by the adverse motions aforesaid.

(4) It is agreed that the defendants may offer in evidence, upon the hearing of the motions and that any Appellate Court may consider as exhibits offered by the defendants, the documents or excerpts therefrom relied upon by defendants and included in the following printed documents, books and pamphlets, without any question being raised on

the part of the plaintiff as to the genuineness or authenticity of such documents, or on the ground that such documents are not the best evidence of their contents:

(a) Pamphlet copy of charter, constitution, etc., 1941-1943, of Railway Mail Association, as printed by it;

[fol. 20] (b) Pamphlet, "The Railway Mail Association and the Railway Postal Clerk," as printed by the Association, without date but apparently soon after 1930;

(c) Periodical, "Railway Post Office," Vols. 42, 43 and 44, being the issues of July, 1940, to May, 1943, inclusive;

(d) Proceedings of American Federation of Labor 1941 annual convention held at Seattle, as printed by the A. F. of L.;

(e) "Handbook of American Trade-Unions," 1936 edition, being Bulletin No. 618 of U. S. Dept. of Labor;

(f) Pamphlet copies of hearings before certain committees of the House of Representatives, as officially printed, the dates and titles of such hearings and the particular testimony being the following:

(I) 1939 Mar. 21. "Substitute Postal Employees," particularly testimony of J. Frank Bennett, Pres. of R. M. A., pages 46-50.

(II) 1940 Mar. 12. "Substitute Postal Employees," particularly testimony of Pres. Bennett, page 13.

(III) 1940 Apr. 5. "Postal Employees Longevity Pay," particularly testimony of Industrial Secty. Strickland, pages 42-44. (This was a joint sub-committee rather than a House Committee.)

(IV) 1940 Apr. 25. "Motor Garage Service," particularly testimony of Pres. Bennett, page 14.

[fol. 21] (V) 1941 Mar. 25. "Basis for Computing Pay for Overtime Work by Railway Mail Laborers," particularly testimony of Vice-Pres. Harvey, page 7.

(VI) 1943 Feb. 25, 26. "Postal Employees Salary Bills," particularly testimony of Mr. Mitiguy, pages 73-74; Pres. Harvey, 92-98; Mr. Wright, 110-113; Mr. Gladstone, 140-142.

(VII) Either side shall have the right to call the Court's attention to any other testimony or statement appearing in said pamphlets designated as I-VI inclusive, given or made in relation to the legislative measures being considered at such hearings.

(g) Printed form, "Application for Membership in the Beneficiary Department of the Railway Mail Association";

(h) Certificate of Affiliation, granted by the American Federation of Labor to the Executive Officers of the plaintiff, bearing date the 22d day of December, 1917;

(i) "The Labor Movement in a Government Industry," by Sterling Denhard Spero, published by George H. Doran Co., N. Y., 1924;

(j) "The Black Worker" (sub-title, "A Study of the Negro and the Labor Movement") by Sterling D. Spero and Abram L. Harris. Columbia University Press, 1931. Quotations from pages 67-69, 57-58, and 12[illegible] 124, typed and submitted herewith, to which defendants shall be limited;

[fol. 22] (k) "The Travelling Post Office," by William J. Dennis, published by Homestead Printing Co., Des Moines, 1916, pages 54-73;

(l) Four telegrams: Berkley to Meany, May 19, 1943; Meany to Berkley, May 20; Berkley to Meany, May 21; Meany to Berkley, May 24;

(m) "How Collective Bargaining Works," a 1942 publication of the Twentieth Century Fund. Only the line on page 961, "Railway Mail Association 22,700," and the material on page 958 to the effect that this purports to be a list of trade unions and statement of their 1941 memberships, taken from the Report of the Executive Council of the A. F. of L. for that year; but plaintiff reserves the right to object to the receiving in evidence or the consideration of the same as exhibits on appeal, upon the ground that the same are incompetent, immaterial and irrelevant to the issues of law raised in this action by the pleadings, except as to the items (a) to (h) inclusive.

(5) It is further agreed that the plaintiff may offer in evidence upon said hearing, and any Appellate Court may consider as exhibits the following documents or excerpts therefrom, viz.:

(1) Memorandum of Governor Herbert H. Lehman in connection with his approval of Chapter 9 of the Laws of 1940 amending the Civil Rights Law;

(2) Message of Governor Herbert H. Lehman to the Legislature, January 3, 1940, in reference to Industry and Labor;

[fol. 23] (3) Proceedings of Convention of 1917 of the Railway Mail Association *in re* adoption of a resolution for affiliation with the American Federation of Labor, and submission on referendum to the membership for approval; the form of ballot upon such referendum, appearing in the "Railway Post Office," together with articles and correspondence in relation to the question of affiliation as contained in the issues of said periodical for the months of January-December, inclusive, in the year 1917.

Dated: Sept. 16, 1943.

Dugan & Dugan, Attorneys for Plaintiff. Nathaniel L. Goldstein, Attorney-General, Attorney for Defendants. By Henry S. Manley, Assistant Attorney-General.

IN SUPREME COURT OF NEW YORK, ALBANY COUNTY

JUDGMENT

The issues raised by the pleadings in the above-entitled action having duly come on to be heard at a Special Term of this Court held at the Court House in the City of Albany on the 24th day of September, 1943, Justice William H. Murray presiding, pursuant to the Stipulation of the parties, that the same should be submitted as though upon [fol. 24] a motion by the plaintiff for summary judgment as prayed in the Complaint and upon a cross-motion by the defendants that the Complaint be dismissed; and the plaintiff having appeared therein by Dugan & Dugan, by Daniel J. Dugan of counsel, and the defendants having appeared therein by Hon. Nathaniel L. Goldstein, Attorney-General of the State of New York, by Orrin G. Judd, Esq., Solicitor-General, Wendell P. Brown, Esq., First Assistant Attorney-General, and Henry S. Manley, Esq., Assistant Attorney-General, of counsel; and the questions involved having been argued orally and in the Briefs of the respective coun-

sel, and the Court after due deliberation having ordered that plaintiff's motion for judgment in its favor be granted and that the defendants' motion to dismiss the Complaint be denied and that a Declaratory Judgment in favor of the plaintiff as prayed in the Complaint be entered accordingly herein.

Now, upon motion of Dugan & Dugan, attorneys for the plaintiff, it is declared and adjudged as follows:

1. That the plaintiff is and was at all the times stated in the Complaint herein a fraternal benefit insurance corporation organized under the laws of the State of New Hampshire and having its principal office at the City of Portsmouth in the State of New Hampshire; and is organized and established to conduct the business of a fraternal beneficiary association for the sole benefit of its members and beneficiaries and not for profit; to promote closer social [fol. 25] relationship among Railway Postal Clerks, to better enable them to perfect any movement that may be for their benefit as a class or for the benefit of the Railway Mail Service; to provide relief for its members and their beneficiaries and make provision for the payment of benefits to them in case of death, sickness, temporary or permanent physical disability either as a result of disease, accident or old age.

2. That the plaintiff since September 4, 1913 has been authorized to conduct the business of a fraternal benefit insurance corporation within the State of New York under the applicable provisions of the Insurance Law of said State.

3. That plaintiff is not a labor organization within the meaning or contemplation of Sections 41, 43 and 45 of the Civil Rights Law of the State of New York nor within the meaning and contemplation of Article 20 of the Labor Law of said State.

4. That Article III of the By-laws and Constitution of the plaintiff which provides as follows: "Any regular male Railway Postal Clerk or male substitute Railway Postal Clerk of the United States Railway Mail Service, who is of the Caucasian race, or a native American Indian, shall be eligible to membership in the Railway Mail Association" is not in conflict with the aforesaid provisions of such Civil Rights Law and Labor Law of the State of New York and

that such laws do not apply to the plaintiff, its division and branch associations, officers or members within the State of New York.

[fol. 26] 5. That applied to the plaintiff, its division and branch associations, officers or members within the State of New York, said provisions of the Civil Rights Law and Labor Law of the State of New York are illegal and have no legal force or effect.

6. That the membership of the plaintiff comprises regular and substitute male Railway Postal Clerks of the United States Railway Mail Service whose appointments and promotions in said Service are made under and pursuant to the Civil Service Law of the Government of the United States and that such clerks are not engaged in private industry.

7. That the Industrial Commissioner of the State of New York has no legal right nor power or authority to regulate or control the business as conducted by the plaintiff within the State of New York.

8. And it is hereby further ordered, adjudged and decreed that the Industrial Commissioner of the State of New York, his deputies, officers, representatives and employees be and they are and each of them is hereby permanently enjoined from taking any action or procedure to apply or enforce the provisions of Sections 41, 43 and 45 of the Civil Rights Law of the State of New York, and/or the provisions of Article 20 of the Labor Law of the State of New York to or against the plaintiff, its division and branch associations, officers or members thereof, within the State of New York, [fol. 27] or of interfering with the plaintiff's right of selection of its members.

Judgment entered November 24, 1943.

William H. Murray, J. S. C.

W. B. Clarke, Clerk.

In Supreme Court of New York, Albany County

Order for Judgment—September 24, 1943

The plaintiff herein having brought this action against Frieda S. Miller, as Industrial Commissioner of the State

of New York, and John J. Bennett, Jr., as Attorney-General of the State of New York, for a declaratory judgment by which this Court should declare and determine as follows:

1. That Sections 41, 43 and 45 of the Civil Rights Law of the State of New York and the provisions of the Labor Law as now in existence have no application and do not apply to the plaintiff, Railway Mail Association, its members and Division and Branch Associations, and that the [fol. 28] Railway Mail Association is not a labor organization within the meaning or contemplation of such laws;

2. That if sought to be applied to the plaintiff herein such laws are in contravention to the Constitution of the United States, Article I, Section 8, Subdivision 7, and of Articles Fifth and Fourteenth of the Amendments to said Constitution and to the provisions of Section 6 of Article 1 of the Constitution of the State of New York;

3. That this Court declare and determine the rights of the parties, not herein otherwise specifically asked;

4. And for further and consequential relief that the Industrial Commissioner of the State of New York be enjoined from taking action or procedure against the plaintiff or its Division or Branch Associations within the State of New York, or the officers or members thereof, and for such other and further relief as may be legal and equitable in the premises with costs; and the present defendants having, by an Order of this Court duly made and entered herein, been substituted in the place and stead of the original defendants without prejudice to the proceedings previously had herein; and the defendants having appeared by Hon. Nathaniel L. Goldstein, Attorney-General of the State of New York, and interposed a verified Answer admitting all allegations of the Complaint except that defendants denied that the definition of "labor organization" set forth in paragraph fourteen of the Complaint is applicable for [fol. 29] any purpose except Article 20 of *of* the Labor Law and denied that it is applicable to the issues involved herein; and likewise denied that the statutory provision alleged in paragraph fifteen of the Complaint is applicable to said issues; and further denied each and every allegation of paragraph twenty-four of the Complaint and so much of paragraph twenty-two thereof as alleges that plaintiff is not a labor organization within the spirit or contemplation of

the Labor Law or of the Civil Rights Law of the State of New York, and which said denials raised questions of law only as to the application and legal effect as to the plaintiff of Sections 41, 43 and 45 of the Civil Rights Law and of Article 20 of the Labor Law of the State of New York; and the parties on the issues of law so raised having entered into a Stipulation, dated September 16, 1943, to submit such issues to this Special Term as though upon a motion by plaintiff for summary judgment as prayed in the Complaint, and upon a cross-motion by defendants that the Complaint be dismissed; and such issues having been accordingly presented to the Court; and after hearing Dugan & Dugan, as attorneys for the plantiff, by Daniel J. Dugan, of counsel, and the Hon. Nathaniel L. Goldstein, Attorney-General of the State of New York, by Orrin G. Judd, Esq., Solicitor-General, Wendell P. Brown, Esq., First Assistant Attorney-General, and Henry S. Manley, Esq., Assistant Attorney-General, of counsel, for defendants, and due deliberation being had thereon.

[fol. 30] Now, upon reading and filing the Summons and Complaint, the Answer and said Stipulation, and upon motion of Dugan & Dugan, attorneys for the plaintiff, it is hereby

Ordered, that plaintiff's motion for judgment in its favor be and the same hereby is granted; and it is further ordered that defendants' motion to dismiss the Complaint be and the same hereby is denied and that a declaratory judgment in favor of the plaintiff as prayed in the Complaint be entered accordingly herein.

Enter:

William H. Murray, Justice of the Supreme Court.

In Supreme Court of New York, Albany County Special Term

(Justice William H. Murray presiding)

Appearances:

Dugan and Dugan, Esqrs., Attorneys for Plaintiff. (Daniel J. Dugan, Esq., of Counsel.)

Hon. Nathaniel L. Goldstein, Attorney-General, Attorney for Defendants. (Orrin G. Judd, Esq., Solicitor General, Wendell P. Brown, Esq., First Assistant Attorney-

General and Henry S. Manley, Esq., Assistant Attorney-General, of Counsel.)

OPINION—September 24, 1943

[fol. 31] MURRAY, J.:

This action is by plaintiff for a summary declaratory judgment and a countermotion by defendants for a dismissal of the complaint. No questions of fact are involved. The issues are of law. Plaintiff is a membership fraternal beneficiary corporation organized in the year 1898 under the laws of the State of New Hampshire, at which time the corporate name was National Association of Railway Postal Clerks. The present name of plaintiff was assumed by it September 21, 1904. The Certificate of Incorporation states that: "The object for which this corporation is established is to conduct the business of a fraternal beneficiary association for the sole benefit of its members and beneficiaries and not for profit; to promote closer social relationship among railway postal clerks; to better enable them to perfect any movement that may be for their benefit as a class or for the benefit of the railway mail service; to provide relief for its members and their beneficiaries and make provisions for the payment of benefits to them in case of death, sickness, temporary or permanent physical disability, either as a result of disease, accident or old age."

Both New Hampshire and New York States have recognized and approved plaintiff's Articles of Incorporation and by-laws to the effect that it has the right to conduct a fraternal insurance business within such States. Membership in plaintiff is restricted to regular male Railway Postal [fol. 32] Clerks or male substitute Railway Mail Postal Clerks of the United States Railway Mail Service, who are of the Caucasian race or are native American Indians. There are approximately twenty-two thousand (22,000) members, classified either as general or non-beneficiary or as beneficiary or full members. Ninety-nine (99%) per cent of the members are beneficiary or full members, and upon death of such a member through external, violent and accidental means, moneys are paid by plaintiff to their designated beneficiaries. Appointments and promotions in the Railway Mail Service are made under and pursuant to the Civil Service Laws of the United States.

There are Division and Branch Associations of plaintiff in various states of the United States, and within the State

of New York, there are established and maintained thirteen (13) Branch Associations. Certain officers and members of a Branch Association of the Second Division in the City of New York have challenged the right of plaintiff to insist on observance of Article III of its Constitution that only persons of the Caucasian race or native American Indians be admitted to membership. The Attorney-General of the State of New York has advised the Industrial Commissioner of the State of New York that plaintiff is a labor organization, and that Article III of its Constitution is invalid and unenforceable within the State of New York. That plaintiff has no valid or legal right to deny to any applicant, otherwise duly qualified, membership by reason of race, color or creed.

[fol. 33] The opinion of the Attorney-General is predicated upon Section 43 of the Civil Rights Law (Chapter 9, Laws of State of New York, 1940) as follows:

> "Discrimination by labor organizations prohibited. As used in this section, the term 'labor organization' means any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining, or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection. No labor organization shall hereafter, directly or indirectly, by ritualistic practice, constitutional or by-law prescription, by tacit agreement among its members, or otherwise, deny a person or persons membership in its organization by reason of his race, color or creed, or by regulations, practice or otherwise, deny to any of its members, by reason of race, color or creed, equal treatment with all other members in any designation of members to any employer for employment, promotion or dismissal by such employer."

Also, under Section 41, Civil Rights Law (amended by Chapter 9, Laws of State of New York, 1940 and amended further by Laws of 1941 and 1942).

Section 45 of the Civil Rights Law added by the Laws of the State of New York, 1942, provides:

> "Powers of administration vested in industrial com-
> [fol. 34] missioner. The industrial commissioner may enforce the provisions of sections forty-two, forty-three and forty-four of this chapter. For this purpose he may use the powers of administration, investigation,

inquiry, subpoena, and hearing vested in him by the labor law; he may require submission at regular intervals or otherwise of information, records and reports pertinent to discriminatory practices in industries."

Defendants contend that plaintiff is a labor organization, because of the provisions contained in its Articles of Incorporation, in its Constitution, and, because since the year 1917, plaintiff has been a member organization in the American Federation of Labor, having accepted a Certificate of Affiliation from such Federation of Labor and having contributed to the expenses of such organization, and further by participating in its conventions and other activities.

Plaintiff emphatically denies it is a labor organization in fact or in law measured, either by the terms of its charter, its laws or by the nature of the service and work its members perform. Plaintiff maintains that the Labor Law of the State of New York, Chapter 31 of the Consolidated Laws of the State of New York, Section 715 specifically exempts and excludes plaintiff from the category of a labor organization even if it be held that plaintiff is such a body.

Such law of immunity is as follows:

"The provisions of this article shall not apply to the [fol. 35] employees of any employer who concedes to and agrees with the board that such employees are subject to and protected by the provisions of the national labor relations act or the federal railway labor act or to employees of the state or of any political or civil subdivision or other educational or religious associations or corporations."

Defendants assert that the status of plaintiff is defined clearly by the provisions of Section 43 of the Civil Rights Law, and that such statute is valid and applicable to it. Plaintiff insists that Sections 41, 43 and 45 of the Civil Rights Law alone have no application to it, but are in *pari materia* with other sections of the Labor Law and all should be construed together. That the new provisions of the Civil Rights Law were designed to implement the provisions of the Labor Law dealing with the same subject. Thus construed, the statutes and its subdivisions clearly demonstrate a specific intent to exclude employees of the State from applications to them of the Civil Rights Law, particularly Section 43.

Actions for declaratory judgments are proper where the legality or meaning of a statute or of a ruling made by an administrative official is in dispute and no question of fact involved. (Dun & Bradstreet, Inc. v. City of New York, 276 N. Y. 198; Socony-Vacuum Oil Co. v. City of New York, 247 App. Div. 163; affd. 272 N. Y. 668.) The purpose of a declaratory judgment is to determine disputed jural questions when a genuine controversy exists and when such a judgment will serve a practical end in determining and [fol. 36] stabilizing an uncertain or disputed jural question, either as to present or prospective obligations. (New York Operators v. State Liquor Authority, 285 N. Y. 272; James v. Alderton Dock Yards, 256 N. Y. 298; Sartorious v. Cohen, 249 N. Y. 31; Brownell v. Board of Education, 239 N. Y. 369.)

The basic fundamental element presented for determination is whether plaintiff is a labor organization. Section 43 of the Civil Rights Law, in part, specifically provides that:

> "*No labor organization shall hereafter directly or indirectly* * * * *deny a person or persons membership in its organization by reason of his race, color or creed* or by regulations, practice or otherwise, deny to any of its members by reason of race, color or creed, equal treatment with all other members in any designation of members to any employer for employment, promotion or dismissal by such employer." (Consolidated Laws, 1940, Civil Rights Law, Article 4, Section 43.) (Italics mine.)

The term labor organization is defined in Section 43 of the Civil Rights Law in exactly the same words, language and phraseology as is used in Section 701, subdivision 5 of the Labor Law (Consolidated Laws, 1937, Article 20) which is: "That a labor organization means any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining, or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection."

[fol. 37] What is collective bargaining? Some light is cast upon the meaning and implications of this significant phrase by a statement of some of the recognized evils which flow from refusal to bargain collectively as set forth in Section 700 of the Labor Law as follows:

> "When some employers deny the right of employees to full freedom of association and organization, and re-

fuse to recognize the practice and procedure of collective bargaining, their actions lead to strikes, lockouts and other forms of industrial strife and unrest which is inimical to the public safety and welfare, and frequently endanger public health."

Collective bargaining broadly defined is an agreement between an employer and a labor union which regulates the terms and conditions of employment with reference to hours of labor, wages, and deals also with strikes, lockouts, walkouts, arbitration, shop conditions, safety devices, the enforceability and interpretation of such agreement and of numerous other relations existing between employer and employee.

Plaintiff has only such rights and powers as are expressly granted it by its charter or implied as are necessary in the exercise of its corporate franchise. A proposition which is beyond dispute, and generally recognized is that a corporation cannot enter into or bind itself by a contract prohibited by its charter.

> "Corporations are artificial creations existing by virtue of some statute and organized for the purposes [fol. 38] defined in their charters. * * * A corporation necessarily carries its charter wherever it goes, for that is the law of its existence." (Jennison v. Citizens Savings Bank, 122 N. Y. 135, at page 140.)
>
> "Wherever a corporation goes for business it carries its charter, and the charter is the same abroad that it is at home." (Relfe v. Rundle, 103 U. S. 226.)
>
> "Whatever disabilities are placed on the corporation at home it retains abroad, and whatever legislative control it is subjected to at home must be recognized and submitted to by those who deal with it elsewhere." (McClemont v. Order of Foresters, 222 N. Y. 470, at page 480.)

When the State of New York through its Department of Insurance examined the Articles of Incorporation and the certificates and other evidence of the insurance contract issued by plaintiff to its members and conferred upon it authority to transact insurance business within the State of New York, it determined then and there by such decision both as a matter of fact and law that plaintiff was a beneficial insurance society and not a labor organization.

Section 154, subdivision 1, of the Insurance Law states:

> "No policy of life insurance, industrial life insurance, group life insurance, accident or health insurance, group or blanket accident or health insurance or non-cancellable disability insurance, *no fraternal benefit certificate*, and no annuity or pure endowment [fol. 39] contract or group annuity contract *shall be issued or delivered in this state unless a copy of the form thereof shall have been filed with the superintendent and approved by him* as conforming to the requirements of this chapter and not inconsistent with law." (Italics mine.)

Membership in plaintiff is confined strictly to persons who pass United States Civil Service examinations for the position of Railway Mail Clerk. The primary purpose of Civil Service laws and rules is to promote the good of the public service. The underlying principle of such law is to afford to everyone who has the necessary qualifications an equal opportunity of securing appointment. (People v. Kearney, 164 N. Y. 64; Matter of Mendelson v. Finegan, 168 Misc. 102; affd. Mendelson v. Kern, 278 N. Y. 568.)

Civil Service employees of the United States are protected from summary removal except for cause by Section 652 of the Classified Civil Service Code-Title 5, which is as follows:

> "Removals from classified civil service only for cause. No person in the classified civil service of the United States shall be removed therefrom except for such cause as will promote the efficiency of said service and for reasons given in writing, and the person whose removal is sought shall have notice of the same and of any charges preferred against him, and be furnished with a copy thereof, and also be allowed a reasonable time for personally answering the same [fol. 40] in writing; and affidavits in support thereof; but no examination of witnesses nor any trial or hearing shall be required except in the discretion of the officer making the removal; and copies of charges, notice of hearing, answer, reasons for removal, and of the order of removal shall be made a part of the records of the proper department or office, as shall also the reasons for reduction in rank or compensation;

and copies of the same shall be furnished to the person affected upon request, and the Civil Service Commission also shall, upon request, be furnished copies of the same. * * *"

Not only must charges be preferred, but they must be based on substantial matters. To justify removal the charges must be made in good faith and not as a mere pretext for removal. Against unjust discharge, employees have recourse to the courts for redress, review and reinstatement in their positions. They are shielded by law from the anger and temper of arrogant, dictatorial and disagreeable superiors, who, to vent their spleen or otherwise, prefer fanciful and unsubstantial charges. No such safeguard surround the industrial worker. When discharged, he is discharged, and that is the end of the matter. The courts are not open to him for relief.

To tolerate or recognize any combination of Civil Service employees of the Government as a labor organization or union is not only incompatible with the spirit of democracy, but inconsistent with every principle upon which [fol. 41] our Government is founded. Nothing is more dangerous to public welfare than to admit that hired servants of the state can dictate to the Government the hours, the wages and conditions under which they will carry on essential services vital to the welfare, safety and security of the citizen. To admit as true that Government employees have power to halt or check the functions of Government, unless their demands are satisfied, is to transfer to them all legislative, executive and judicial power. Nothing would be more ridiculous.

The reasons are obvious which forbid acceptance of any such doctrine. Government is formed for the benefit of all persons, and the duty of all to support it is equally clear. Nothing is more certain than the indispensable necessity of government, and equally true, that unless the people surrender some of their natural rights to the Government it cannot operate. Much as we all recognize the value and the necessity of collective bargaining in industrial and social life, nonetheless, such bargaining is impossible between the Government and its employees, by reason of the very nature of Government itself. The formidable and familiar weapon in industrial strife and warfare—the strike—is without justification when used against the

Government. When so used, it is rebellion against constituted authority.

Plaintiff is not only not a labor organization within the terms of its charter, but it does not exist nor is it constituted for the purpose in whole or in part of collective bargaining. The mere fact that the American Federation [fol. 42] of Labor issued to plaintiff a Certificate of Affiliation, in no manner repeals, rescinds or amends the charter granted plaintiff to transact insurance business. The acceptance by plaintiff of such Certificate of Affiliation was an *ultra vires* act not within the powers conferred on plaintiff by the State of New Hampshire, and is of no force or effect.

Collective bargaining has no place in government service. The employer is the whole people. It is impossible for administrative officials to bind the Government of the United States or the State of New York by any agreement made between them and representatives of any union. Government officials and employees are governed and guided by laws which must be obeyed and which cannot be abrogated or set aside by any agreement of employees and officials.

President Franklin D. Roosevelt in clear, definite and precise language declares that militant tactics have no place in the functions of any organization of Government employees as follows:

> "Upon employees in the Federal service rests the obligation to serve the whole people, whose interests and welfare require orderliness and continuity in the conduct of Government activities. This obligation is paramount.
>
> Since their own services have to do with the functioning of the Government, a strike of public employees manifests nothing less than an intent on their part to prevent or obstruct the operations of government until their demands are satisfied. Such action, [fol. 43] looking toward the paralysis of government by those who have sworn to support it, is unthinkable and intolerable." (Letter written to Luther C. Steward, President of National Federation of Federal Employees.)

Section 43 of the Civil Rights Law creates no new civil remedy. Any person who violates any of its provisions

is guilty of a misdemeanor. It must be stricty construed. (People v. Benc, *et al.*, 288 N. Y. 318.) The purpose and intent of the statutes is that "organized labor" must not discriminate as to membership in labor unions by reason of race, color or creed. The purpose of Sections 41, 43 and 45 is penal. They do not provide for civil remedies. These sections were not enacted for the purpose of compelling a fraternal beneficiary insurance association to admit as members every person regardless of race, color or creed.

Tested by the charter of plaintiff, the approval of the State of New York, that plaintiff is a fraternal beneficiary society, the type, kind and character of the employment of the members of plaintiff, the New York State Labor Relations Act and the Civil Rights Law construed together, the demonstrated fact that Civil Service employees of the United States have no right or authority to bargain collectively, the conclusion is unescapable that plaintiff is not a "labor organization" within the purview of Section 43 of the Civil Rights Law. To hold otherwise would be to sanction control of governmental functions not by laws but by men. Such policy if followed to its logical conclu-
[fol. 44] sion would inevitably lead to chaos, dictators and the annihilation of representative government.

Judgment in accordance herewith is granted plaintiff.
Submit order.
Dated: Troy, New York, November 4th, 1943.

* * * * * * *

[fol. 45] In Supreme Court of New York, Albany County

[Title omitted]

Notice of Appeal to the Court of Appeals

Please take notice, that the above-named plaintiff hereby appeals to the Court of Appeals of the State of New York from the judgment entered in this action in the office of the Clerk of the County of Albany on the 13th day of March, 1944, upon the order of the Appellate Division of the Supreme Court, Third Department, which judgment reversed on the law the order and judgment granted at Special Term in favor of the plaintiff declaring that plaintiff is not a

labor organization within the meaning of the Civil Rights Law, Section 43, and restraining defendants from enforcing said statute against the plaintiff, and dismissed the plaintiff's Complaint herein with costs.

Dated: Albany, New York, April 13, 1944.

Dugan & Dugan, Attorneys for Plaintiff-Appellant, Office & Post Office Address, 90 State Street, Albany 7, New York.

[fol. 46] To Hon. Nathaniel L. Goldstein, Attorney-General, Attorney for Defendants, and Wellington B. Clarke, Albany County Clerk.

IN SUPREME COURT OF NEW YORK, ALBANY COUNTY

JUDGMENT ENTERED UPON ORDER OF REVERSAL

The Appellate Division, Third Department, having sent hither its remittitur wherein it is ordered that the order and judgment entered in Albany Clerk's office on November 24, 1943, declaring plaintiff is not a labor organization within the meaning of Civil Rights Law § 43, and restraining defendants from enforcing said statute against the plaintiff, be and are reversed on the law and judgment granted in favor of the defendants dismissing the complaint with costs; and such costs having been taxed at the sum of $136.95; it is now, on motion of Honorable Nathaniel L. Goldstein, Attorney-General, hereby

Adjudged, that said order and judgment be and are reversed on the law and judgment hereby is granted in favor of the defendants dismissing the complaint; and that the defendants have judgment against plaintiff for the sum of $136.95; and have execution therefor.

Wellington B. Clarke, Albany County Clerk.

[fol. 47] IN SUPREME COURT OF NEW YORK, APPELLATE DIVISION

Present: Hon. James P. Hill, Presiding Justice; Hon. F. Walter Bliss, Hon. Christopher J. Heffernan, Hon. Gilbert V. Schenck, Associate Justices.

[Title omitted]

ORDER OF REVERSAL

This appeal from an order and judgment of the Supreme Court, entered in the Albany County Clerk's office on No-

vember 24, 1943, declaring plaintiff is not a labor organization within the meaning of Civil Rights Law § 43, and restraining defendants from enforcing said statute against the plaintiff, having duly come on for argument before this Term of the Appellate Division, and having been argued [fol. 48] for the defendants-appellants by Honorable Nathaniel L. Goldstein, Attorney-General of the State of New York, and for the plaintiff-respondent by Messrs. Dugan & Dugan, 90 State Street, Albany, N. Y., and due deliberation having been had; it is now, on motion of the Attorney-General, hereby

Ordered, that the order and judgment be and are reversed on the law, and judgment granted in favor of the defendants dismissing the complaint with costs.

John S. Herrick, Clerk.

In Supreme Court of New York, Appellate Division

Argued: January, 1944 Term. Decided: —— —, 1944

Hon. James P. Hill, P. J.; Hon. F. Walter Bliss, Hon. C. J. Heffernan, Hon. G. V. Schenck, A. JJ.

Appeal from an order and judgment of the Supreme Court entered in the Albany County Clerk's office on November 24, 1943 declaring plaintiff is not a labor organization within the meaning of Civil Rights Law Section 43 and restraining defendants from enforcing said statute against the plaintiff.

[fol. 49] Hon. Nathaniel L. Goldstein, Attorney General of the State of New York, Attorney for Defendants-Appellants, The Capitol, Albany, N. Y.

Messrs. Dugan & Dugan, Attorneys for Plaintiff-Respondent, 90 State Street, Albany, N. Y.

Opinion for Reversal

Bliss, J.

The question in this case is whether Railway Mail Association is violating Civil Rights Law Section 43. It arises in an action for a declaratory judgment.

The statute:

"Section 43. Discrimination by labor organizations prohibited.

As used in this section, the term 'labor organization' means any organization which exists and is con-

stituted for the purpose, in whole or in part, of collective bargaining, or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection. No labor organization shall hereafter, directly or indirectly, by ritualistic practice, constitutional or by-law, prescription, by tacit agreement among its members or other wise, deny a person or persons membership in its organization by reason of his race, color or creed, or by regulations, practice or otherwise, deny to any of its members, by reason of race, color or creed, equal treat-
[fol. 50] ment with all other members in any designation of members to any employer for employment, promotion or dismissal by such employer."

Railway Mail Association is a New Hampshire Corporation with branch organizations in New York State. It was organized in 1898 and is a membership corporation. Its corporate purposes are:

"The object for which this corporation is established is to conduct the business of a fraternal beneficiary association for the sole benefit of its members and beneficiaries and not for profit; to promote closer social relationship among Railway Postal Clerks; to better enable them to perfect any movement that may be for their benefit as a class or for the benefit of the Railway Mail Service; to provide relief for its members and their beneficiaries and make provisions for the payment of benefits to them, in case of death, sickness, temporary or permanent physical disability, either as a result of disease, accident or old age."

Duties of its Industrial Secretary are:

"To collect and compile useful data relative to wage standards and working conditions in the Industrial Field and Postal Service and other subjects which may be of benefit in promoting the welfare of Railway Postal Clerks.

"To assist in the presentation of grievances per-
[fol. 51] taining to service conditions and endeavor to secure adjustment of such through administrative action.

"To act as the representative of members of the Railway Mail Association before the United States Employees' Compensation Commission."

The opening ritual of an association meeting includes a recital that the membership is pledged to "the betterment of service conditions". An Association publication recites among the achievements of the Association the improvement of the service and conditions of employment. It states that the activity of the Association is directed to "promoting the welfare of railway postal clerks by improving conditions under which they work". It takes credit for having secured many material benefits financially and in working conditions. In the official publication the Industrial Secretary stated: "Only through collective action have workers ever improved wage and working conditions". The Association is classified as a labor union in the official bulletin of the United States Department of Labor. Since 1917 it has been a member of the American Federation of Labor and the certificate of affiliation from that body refers to it as a union. It assumes credit for having secured beneficial legislation. Thus by its own acts the Association has interpreted its charter to include certain phases of collective bargaining and dealing with the Federal Government concerning grievances, terms and conditions of employment and rendering its [fol. 52] members mutual aid and protection. The Association comes clearly within the statutory definition of a labor union.

It is argued that Civil Rights Law Section 43 is limited by Labor Law Section 715 which contains a similar definition of a labor union but excludes employees of the state or any political subdivision thereof. The definition in Section 715 is limited to Article 20 of that law which article is known as the Labor Relations Act. The definition in Civil Rights Law Section 43 is complete in itself and is specifically limited to that section. Each definition is intended only for its respective article or section and they are not interchangeable or supplemental. They are not *in pari materia.*

Now let us inquire whether the plaintiff, a labor union within the meaning of Civil Rights Law Section 43 is violating that section.

Article III of the association's constitution restricts its membership as follows:

"Any regular male Railway Postal Clerk or male substitute Railway Postal Clerk of the United States Railway Mail Service, who is of the Caucasian race,

or a native American Indian, shall be eligible to membership in the Railway Mail Asociation."

Applicants for membership are required to state in writing their race or color.

Thus it is obvious on the face that the plaintiff offends against the provisions of this statute in that it limits its membership to persons of the Caucasian race or native American Indians.

[fols. 53-54] It is further urged that because plaintiff is permitted to do an insurance business within the State of New York, it is not a labor organization. The insurance features of plaintiff's powers do not alter the fact that it is also a labor organization within the meaning of Civil Rights Law Section 43. These powers are in addition to its other functions and activities and furnish no reason for excluding plaintiff from the operation of this statute.

Nor do we find in Civil Rights Law Section 43 or its application to plaintiff, any violation of the state or federal constitution as plaintiff urges. We see here no attempt on the part of the state to infringe upon the federal power to conduct the postal system or handle the mails. The racial discrimination forbidden by this statute is too far removed from the operations of the federal government even though membership in the plaintiff is limited to railway postal clerks and substitutes. There is no effort on the part of the state to regulate or interfere with the railway mail service. Quite the contrary. It is an effort to prevent racial and religious discrimination in all labor organizations operating within the state.

The order and judgment should be reversed on the law and judgment granted in favor of the defendant dismissing the complaint with costs.

[fol. 55] In Court of Appeals of New York

Railway Mail Association, Appellant,

v.

Edward S. Corsi, as Industrial Commissioner of the State of New York, et al., Respondents

Decided July 19, 1944

Appeal from a judgment, entered March 13, 1944, upon an order of the Appellate Division of the Supreme Court

in the third judicial department which reversed, on the law, a judgment of the Supreme Court, Albany County, in favor of plaintiff, entered upon an order of the court at Special Term (Murray, J.; opinion 180 Misc. 868); (1) declaring, among other things, that plaintiff is not a labor organization within the meaning of section 43 of the Civil Rights Law, and (2) restraining the defendants, the Industrial Commissioner and Attorney-General of the State of New York, respectively, from enforcing said statute against the plaintiff. The Appellate Division directed a dismissal of the complaint and the judgment appealed from so provides. At the commencement of the action Frieda S. Miller was Industrial Commissioner and John J. Bennett, Jr., was Attorney-General. Respondents now hold and occupy their respective offices and have been substituted as parties defendant.

Daniel J. Dugan and *Daniel J. Dugan, Jr.*, for appellant.

Nathaniel L. Goldstein, Attorney-General (*Wendell P. Brown, Orrin G. Judd* and *Henry S. Manley* of counsel), for respondents.

OPINION

LEHMAN, C. J.:

The plaintiff is a foreign corporation organized under the laws of the State of New Hampshire. It conducts its affairs through Division and Branch Associations. Thirteen Branch Associations are located in different parts of the State of New York. Membership in the Association is confined by the terms of its constitution to "any regular male Railway Postal Clerk or male substitute Railway Postal Clerk of the United States Railway Mail Service who [fol. 56] is of the Caucasian race or a native American Indian." Section 43 of the Civil Rights Law (added by L. 1940 chapter 9) provides in part that "*no labor organization* shall hereafter, directly or indirectly * * * deny a person or persons membership in its organization by reason of his race, color or creed * * * ." Violation of the Statute is a misdemeanor punishable by fine or imprisonment or both. The plaintiff has brought an action for a declaratory judgment "that sections 41, 43 and 45 of the Civil Rights Law of the State of New York and the provisions of the Labor Law, * * * do not apply to the plaintiff * * * and that the Railway Mail Association is not a labor organization within the meaning and con-

templation of said laws." The plaintiff also asks the court to declare "that if sought to be applied to the plaintiff herein such laws are in contravention to the Constitution of the United States, Article I, Section 8, Subdivision 7, and of Articles Fifth and Fourteenth of the amendments to said Constitution and to the provisions of Section 6 of Article 1 of the Constitution of the State of New York." As "consequential relief" the plaintiff asks that "the Industrial Commissioner of the State of New York be enjoined from taking any action or procedure against the plaintiff or its Division or Branch Associations within the State of New York, or the officers or members thereof."

The defendants have admitted all the allegations contained in the complaint except the allegation that the plaintiff is not a "labor organization" within the meaning of the statute. The issues raised by the pleading were by stipulation of the parties submitted to the court at Special Term "as though upon a motion by the plaintiff for summary judgment as prayed for in the complaint and upon a cross motion by the defendants that the complaint be dismissed." No testimony was offered at the hearing and no affidavits were submitted but the parties stipulated that specified documents, books and pamphlets may be considered as exhibits. At Special Term the plaintiff prevailed and judgment in its favor was granted declaring that "plain-[fol. 57] tiff is not a labor organization within the meaning or contemplation of Sections 41, 43 and 45 of the Civil Rights Law of the State of New York nor within the meaning and contemplation of Article 20 of the Labor Law of the State" and enjoining the Industrial Commissioner "from taking any action or procedure to apply or enforce" these statutes. The Appellate Division unanimously reversed on the law the judgment in favor of the plaintiff and granted judgment in favor of the defendants dismissing the complaint. The dismissal of the complaint is based upon the conclusion of the court that the provisions of section 43 of the Civil Rights Law apply to the plaintiff Association and may be enforced against it by the Industrial Commissioner. If we agree with that conclusion we need not consider whether if section 43 of the Civil Rights Law did not apply to it, the plaintiff could obtain in an action for a declaratory judgment the relief it demands.

Section 43 of the Civil Rights Law, which forbids a "labor organization" to deny membership to a person by

reason of his race, color or creed, provides its own definition of the term "labor organization." *As used in that section,* the term "labor organization" means any organization "which exists and is constituted for the purpose in whole or in part of collective bargaining, *or of dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection.*" The purpose for which the plaintiff is constituted, as formulated in its charter, is "to conduct the business of a fraternal beneficiary association for the sole benefit of its members and beneficiaries and not for profit; to promote closer social relationship among Railway Postal Clerks; *to better enable them to perfect any movement that may be for their benefit as a class* or for the benefit of the Railway Mail Service; to provide relief for its members and their beneficiaries and make provisions for the payment of benefits to them, in case of death, sickness, temporary or permanent physical disability, either as a result of disease, accident or old age." (Italics through this opinion are supplied.) [fol. 58] The purpose of "collective bargaining" is not included in the objects for which the plaintiff exists and is constituted. Membership in the plaintiff is confined to mail clerks who are civil service employees and the plaintiff and the defendants agree that the terms and conditions of employment of civil service employees of the Post Office and of other departments or agencies of the Federal, State or City government must be fixed by governmental authority and not by collective bargaining. The purpose of "mutual aid or protection" and in proper case of discussing grievances with their employer and presenting demands or suggestions of their members *as a class,* is included by plain implication in the purposes set forth in the charter. Indeed, among the duties of the Industrial Secretary of the organization, prescribed in its constitution, is the duty to "assist in the presentation of grievances pertaining to service conditions and endeavor to secure adjustment of such through administrative action." The plaintiff joined the American Federation of Labor, which purports to be a federation of labor unions. It is denominated a labor union in the Bulletin of the Department of Labor of the United States. It is decribed as a trade union or labor organization in publications and reports concerning phases of the labor movement by students and organizations of recognized authority, including a recent publication of the

Twentieth Century Fund. In its own publications the plaintiff Association claims the credit for bringing "to every railway postal clerk many material benefits" and for "many additional millions of dollars brought to the pockets of railway postal clerks each year by the efforts of the Association," and it points out that "reforms always come as the result of demands from the worker. If better conditions are worth securing, they must come as the result of organized effort." An association constituted for the purpose of "organized effort" and the presentation of concerted demands of workers as a class in order to secure material benefit and reforms in conditions of employment is a "labor organization" both in common parlance and as defined in section 43 of the Civil Rights Law.

[fol. 59] That is true though the association may exist and be constituted "in part" for other purposes. In this case the plaintiff association conducts, pursuant to its charter, "the business of a fraternal beneficiary association for the sole benefit of its members and beneficiaries and not for profit" and it furnishes insurance at cost to its members. Pursuant to its charter and ritual the plaintiff also seeks "to promote closer social relations among Railway Postal Clerks," or rather among white Railway Postal Clerks eligible for membership in its Association. If these were its only objects it would not be a labor organization and would be free to admit to or exclude from membership such persons as it chose, for good reason, for bad reason or for no reason, but it is undisputed that its objects are not so limited. Indeed, in its own publication it has said: "The activity of the Association is directed along two lines, promoting the welfare of railway postal clerks by improving conditions under which they work and providing benefits for disability and death due to accidental means." To carry out the second activity within the State of New York, the plaintiff Association applied for and received permission to do so from the Superintendent of Insurance, though he ruled that no license was necessary. The fact that the Association is lawfully providing insurance within the State for its members does not tend to show that its members are not associated in an organization which exists and is constituted "in part" for objects which mark it as a "labor organization" as defined in the Civil Rights Law.

The plaintiff Association successfully urged at Special Term that the definition in the Civil Rights Law must be

read in connection with the provision of article 20 of the Labor Law entitled "New York State Labor Relations Act" and that so read the Association is excluded from its terms. Article 20 of the Labor Law is enacted primarily as an appropriate measure for "the protection by law of the right of employees to organize and bargain collectively" (Labor Law, Sec. 700). Like section 43 of the Civil Rights Law, [fol. 60] article 20 of the Labor Law provides its definition "*when used in this article*" of the term "labor organization" and other terms. (Sec. 701.) The words "when used in this article" show a legislative intent to create special definitions of limited application which are not to be enlarged or restricted by other definitions of the same terms contained in other statutes or in other parts of the Labor Law. (*Metropolitan Life Ins. Co. v. State Labor Relations Board*, 280 N. Y. 194.)

The definitions of "labor organization" in section 43 of the Civil Rights Law and in article 20 of the Labor Law are the same except in one clause and the variation is not here material. The contention of the plaintiff Association is not based upon that variation. Its reliance is upon section 715 of the Labor Law which provides: "The provisions of this article shall not apply to the employees of any employer who concedes to and agrees with the board that such employees are subject to and protected by the provisions of the national labor relations act or the federal railway labor act or to employees of the state or of any political or civil subdivision or other agency thereof, or to employees of charitable, educational or religious associations or corporations."

The purpose of section 715 is expressed in plain language. It does not purport to change the definition of the term "labor organization." It does not in terms or in effect prohibit the formation of labor organizations as so defined among the employees of any employer, but it does exclude *from the application of article 20* of the Labor Law the employees in specified employment and it denies to such employees, whether members of labor organizations or not, the benefit of the provisions of the statute devised for "the protection of employees' right to organize and bargain collectively." The exclusion of some categories of employees from the application of the statute constitutes a legislative determination that the "public policy of the state" as "declared" in the same article would not be promoted by "en-

couraging the practice and procedure of collective bargaining" by government employees. The grounds for that determination are plain. Section 43 of the Civil Rights [fol. 61] Laws is intended to promote the public policy securing equality of industrial opportunity for workers, regardless of race, creed or color. There is no indication either in the Civil Rights Law or in the Labor Law that categories of workers who are not entitled to avail themselves of the benefit of the provisions of a statute enacted for the protection of a right of collective bargaining may not lawfully form "labor organizations" for their "mutual aid or protection" in their employment and for the presentation of their grievances as a class and of demands for reform in the terms and conditions of their employment, nor is there anything in the Civil Rights Law which suggests that workers within categories excluded from the application of the State Labor Relations Law are also excluded from the application of the Civil Rights Law.

There remains only the question whether a statute intended to restrict discrimination in membership by labor organizations is constitutional if applied to the plaintiff Association. The plaintiff does not challenge the validity of a statute which would prohibit such discrimination by "labor organizations" to which the provisions of article 20 of the Labor Law apply. It challenges the validity of the statute, if construed in manner broad enough to include the plaintiff in its scope, on the ground that the exclusion of categories of workers from the application of article 20 and their inclusion in the application of section 43 creates "arbitrary, capricious and unreasonable classifications" which denies to the plaintiff organization the equal protection of law guaranteed by the Fourteenth Amendment of the Federal Constitution and denies to the plaintiff due process of law. The plaintiff challenges the validity of the statute also on the ground that it constitutes an invasion by the State into the field of postal service which under the Constitution is within the sole jurisdiction of the government of the United States.

[fol. 62] The plaintiff in its brief makes abundantly clear the grounds upon which the Legislature might reasonably deny to civil service workers in the employ of a governmental unit the benefit of a statute intended for the protection of the right of workers in other employment to bargain

collectively with their employers. In its own official publication the plaintiff also makes abundantly clear the grounds upon which the categories of workers excluded from the application of the provisions of article 20 of the Labor Law may reasonably be included in the application of the provisions of the Civil Rights Law designed to give workers of every race, creed or color equality of opportunity to join organizations intended for collective action to improve the condition of employment of the workers. In its official magazine, "Railway Post Office," the plaintiff published an article by its Industrial Secretary in which it said: "Only through collective action have workers ever improved wage and working standards, but it is particularly true today that the worker whether in industries or *the government service* who is not a member of his group organization is merely an unheard voice crying in the wilderness." Whether or not these statements are wholly accurate is immaterial. At least they are not without foundation and the Legislature does not act arbitrarily or capriciously when it determines that no association of workers, whether in industry or in the civil service, which undertakes to speak and act collectively for such workers in improving wages and working standards may deny membership to a worker because of race, creed or color relegating him to the wilderness where he must cry unheard.

The statute so construed does not impinge upon the powers of the Federal Government to conduct the mail service. The United States Government has recognized the right of mail clerks to organize for collective action in the presentation of grievances though not for collective bargaining. A statute in general terms which prohibits all labor organizations within this State, including organizations of [fol. 63] workers in government service, from discriminating on the ground of race, creed or color violates no public policy of the United States, does not interfere with or impede any government service and invades no field from which the State is excluded by the Constitution.

The judgment should be affirmed, with costs.

Loughran, Rippey, Lewis, Conway, Desmond and Thacher, J.J., concur.

Judgment affirmed.

[fol. 64] IN COURT OF APPEALS OF NEW YORK

[Title omitted]

REMITTITUR—July 19, 1944

Read 7-31-44. F. B., JSC.

Be It Remembered, That on the 10th day of May in the year of our Lord one thousand nine hundred and forty-four, the appellant in this cause, came here unto the Court of Appeals, by Dugan & Dugan, its attorneys, and filed in the said Court a Notice of Appeal and return thereto from the judgment of the Appellate Division of the Supreme Court in and for the Third Judicial Department. And Edward S. Corsi, as Industrial Commissioner of the State of New York, and another, the respondents in said cause, afterwards appeared in said Court of Appeals by Nathaniel L. Goldstein, Attorney-General, their attorney.

[fol. 65] Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon, The said Court of Appeals having heard this cause argued by Mr. Daniel J. Dugan of counsel for the appellant, and by Mr. Wendell P. Brown of counsel for the respondents, and after due deliberation had thereon, did order and adjudge that the judgment of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed with costs.

And it was also further ordered, that the records aforesaid, and the proceedings in this Court, be remitted to the said Supreme Court, there to be proceeded upon according to law.

Therefore, it is considered that the said judgment be affirmed with costs as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court, before the Justices thereof, etc.

John Ludden, Clerk of the Court of Appeals of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE,
Albany, July 19, 1944:

I Hereby Certify, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

John Ludden, Clerk. (Seal State of New York Court of Appeals.)

[fol. 66] IN SUPREME COURT OF NEW YORK, ALBANY COUNTY

Present: Hon Francis Bergan, Justice Presiding.

RAILWAY MAIL ASSOCIATION, Plaintiff,

against

EDWARD S. CORSI, as Industrial Commissioner of the State of New York, and Nathaniel L. Goldstein, as Attorney-General of the State of New York, Defendants

ORDER ON REMITTITUR OF THE COURT OF APPEALS—July 31, 1944

The plaintiff above named having appealed to the Court of Appeals from the judgment entered in this action in the office of the Clerk of the County of Albany on the 13th day of March, 1944, upon the order of the Appellate Division of the Supreme Court, Third Department, which judgment reversed on the law the order and judgment granted at Special Term in favor of the plaintiff declaring that plaintiff is not a labor organization within the meaning of the Civil Rights Law, Section 43, and restraining the defendants from enforcing said statute against the plaintiff, and dismissed the plaintiff's complaint herein, with costs; and the said appeal having been argued at the Court of Appeals by Daniel J. Dugan, Esq., of counsel for the appellant, and by Wendell P. Brown, First Assistant Attorney-General, of counsel for the respondents; and after due deliberation the Court of [fol. 67] Appeals having made its decision thereupon and having ordered and adjudged that the order of the Appellate Division of the Supreme Court so appealed from be affirmed, with costs, and having further ordered that the proceedings and record be remitted to the Supreme Court, there to be proceeded upon according to law,

Now, on reading and filing the said remittitur, and upon motion of Nathaniel L. Goldstein, Attorney-General of the State of New York, attorney for the defendants, it is

Ordered, That the said order and judgment of the Court of Appeals be, and the same hereby are, made the order and judgment of this Court.

Francis Bergan, J. S. C.

[fol. 68] In Supreme Court of New York, County of Albany

Railway Mail Association, Plaintiff,

against

Edward S. Corsi, as Industrial Commissioner of the State of New York, and Nathaniel L. Goldstein, as Attorney-General of the State of New York, Defendants

Judgment on Remittitur of the Court of Appeals

The appeal taken to the Court of Appeals from the judgment entered in this action in the office of the Clerk of the County of Albany on the 13th day of March, 1944, upon the order of the Appellate Division of the Supreme Court, Third Department, which judgment reversed on the law the order and judgment granted at Special Term in favor of the plaintiff declaring that plaintiff is not a labor organization within the meaning of the Civil Rights Law, Section 43, and restraining defendants from enforcing said statute against the plaintiff, and dismissed the plaintiff's complaint herein, with costs, having been duly argued before the Court of Appeals, which has adjudged that the said judgment so appealed from be affirmed, with costs, and that the record and proceedings therein be remitted to the Supreme Court, there to be proceeded upon according to law; and the Court of Appeals having sent hither its remittitur, bearing date July 19, 1944, consisting of the record on appeal thereto and a copy of the judgment of the Court of Appeals rendered thereon; and an order having been duly entered this day by the Supreme Court, making the order and judgment of the Court of Appeals the order and judgment of this Court; and defendants' costs having been duly taxed at the sum hereinafter stated, [fol. 69] Now, on motion of Nathaniel L. Goldstein, Attor-

ney-General of the State of New York, attorney for the defendants, it is

Adjudged That the said order and judgment of the Court of Appeals be, and the same hereby are, made the order and judgment of this Court, and that the above named defendants Edward S. Corsi, as Industrial Commissioner of the State of New York, and Nathaniel L. Goldstein, as Attorney-General of the State of New York, recover from the above named plaintiff, Railway Mail Association, the sum of One Hundred Twenty-six ($126.00) Dollars, as and for their costs of said appeal to the Courts of Appeals, and have execution therefor.

W. B. Clarke, Clerk.

[fol. 70] IN SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1944

RAILWAY MAIL ASSOCIATION, Appellant,

against

EDWARD S. CORSI, as Industrial Commissioner of the State of New York, and Nathaniel L. Goldstein, as Attorney-General of the State of New York, Appellees

PETITION FOR APPEAL

To Hon. Robert H. Jackson, a Justice of the Supreme Court of the United States:

The above-named Railway Mail Association, a corporation organized under the laws of the State of New Hampshire, feeling aggrieved by the judgment of the Supreme Court of the State of New York entered in the Clerk's Office of the County of Albany July 31, 1944 upon the remittitur and final decision of the Court of Appeals of the State of New York, handed down July 19, 1944, in this cause, which said court is the highest court of the State of New York in which a decision in this suit and matter could be had, hereby prays for the allowance of an appeal herein to the Supreme Court of the United States to the end that said judgment and the decision of the said Court of Appeals upon which the same was entered, may be there reviewed and considered and justice done this appellant, and that an order be made allowing such appeal, fixing the

amount of the bond required of the petitioner herein on such appeal, and that a transcript of the record proceedings and papers in this cause duly authenticated by the Clerk of the Supreme Court of the State of New York, Albany [fol. 71] County, under the hand and seal of such Court may be sent to the Supreme Court of the United States as provided by law. The Court of Appeals affirmed the judgment entered in this cause in the office of the County Clerk of Albany County, New York, March 13, 1944, upon the order of the Appellate Division of the Supreme Court of the State of New York, Third Judicial Department, said judgment having reversed the judgment in favor of the plaintiff granted at Special Term of the Supreme Court, and directed the dismissal of the complaint herein with costs and remitted the records and proceedings to the Supreme Court of the State of New York and that thereupon the said Supreme Court of the State of New York, Albany County, on July 31, 1944 ordered that the order and judgment of the Court of Appeals be made the order of the said Supreme Court. That thereby said judgment became and is the final judgment of the highest court of the State of New York in which a decision in this cause could be had and that the Supreme Court of the State of New York has possession of the record in this cause.

Petitioner respectfully shows that this cause is one in which a review can be had in the Supreme Court of the United States as a matter of right in that a final judgment has been rendered in the highest court of the State of New York in which a decision could be had, and that the validity of statutes of the State of New York was drawn in question on the ground of their being repugnant to the Constitution of the United States and the decision was in favor of their validity.

Opinions rendered by the Courts below are reported in 180 Misc. 868, Special Term Opinion, and the opinion of the Appellate Division is reported in 267 App. Div. 470 and in the Court of Appeals, 293 N. Y. 315.

Copies of such opinions are annexed hereto.

Respectfully submitted, Railway Mail Association, by C. M. Harvey, President. Daniel J. Dugan, of Counsel.

[fol. 72] IN SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1944

[Title omitted]

ASSIGNMENT OF ERRORS

The appellant, Railway Mail Association, assigns the following errors in the record and proceedings had in this case:

The Court of Appeals erred:

1. In holding that said Section 43 of said Civil Rights Law of the State of New York as applied to the appellant, its division and branch associations and members was not repugnant to the provisions of Article 1, Section 8, Subdivision 7 of the Constitution of the United States granting to the Congress of the United States the exclusive power for the enactment of legislation in establishing postoffices and post-roads; and in denying and overruling the appellants' contention that the postoffice and post-roads clause aforesaid and the laws enacted by Congress pursuant thereto were not exclusive.

2. In holding that the appellant and its division and branch associations and members within the State of New York whose membership is drawn from the classified service of the Federal Government in the Railway Mail Department of the Post Office Department of the United States are subject to the provisions of Sections 43 and 45 of the Civil Rights Law of the State of New York.

[fol. 73] 3. In holding that said Sections 43 and 45 of said Civil Rights Law as applied to the appellant and its members was not an attempt to regulate an instrumentality of the Federal Postal System.

4. In holding that said Sections 43 and 45 of the said Civil Rights Law as applied to the appellant, its division and branch associations and its members within the State of New York had no relation to the postoffice and post-roads clause of the Constitution of the United States.

5. In holding that the provisions of Sections 41, 43 and 45 of the Civil Rights Law were not repugnant to the due process guarantee of the Fourteenth Amendment to the Constitution of the United States.

6. In holding that said Sections of the Civil Rights Law did not constitute an arbitrary, unlawful and unreasonable abridgment of the property rights of the appellant and its division and branch associations and of their liberty of contract, and did not deprive them of their property within the State of New York in violation of the due process clause of the said Fourteenth Amendment to the Constitution of the United States.

7. In holding that the said provisions of the Civil Rights Law as applied to the appellant, its division and branch associations and members, did not create arbitrary, capricious and unreasonable regulations contrary to the due process clause of the Fourteenth Amendment to the Constitution of the United States, and did not create arbitrary, capricious, unreasonable and discriminatory classifications contrary to the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

8. In holding that the provisions of said Civil Rights Law did not deprive the apppellant of its property without due process of law under the Fourteenth Amendment aforesaid.

9. In affirming the judgment entered in the Supreme Court of the State of New York upon the order of the [fol. 74] Appellate Division of the Third Judicial Department of said State which dismissed the complaint of the plaintiff in this action.

Prayer for Reversal

Because of the foregoing errors, the appellant, Railway Mail Association, prays that the said judgment of the Supreme Court of the State of New York and the decision of the Court of Appeals of the State of New York upon which said judgment was entered, in the above-entitled cause, be reviewed by the Supreme Court of the United States and reversed and judgment rendered in favor of the appellant, with costs in all courts.

Railway Mail Association, by C. M. Harvey, President. Daniel J. Dugan, of Counsel.

[fol. 75] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL

The appellant in the above-entitled action having prayed for the allowance of an appeal herein to the Supreme Court of the United States from the judgment of the Supreme Court of the State of New York entered in the office of the Clerk of Albany County, New York, on the 31st day of July, 1944, upon the remittitur and final decision of the Court of Appeals of the State of New York bearing date July 19, 1944, and having presented and filed its petition for appeal, assignment of errors, prayer for reversal and statement as to jurisdiction on appeal pursuant to the statutes of the United States and the rules of the Supreme Court of the United States, it is

Ordered, that an appeal be and the same hereby is allowed to the Supreme Court of the United States as provided by law, and it is further

Ordered, that the Clerk of the Supreme Court of the County of Albany and State of New York, to which Court the record herein has been remitted, shall prepare and certify a transcript of the record, proceedings and judgment in this cause and transmit the same to the Supreme Court of the United States, so that the transcript shall reach [fol. 76] said Court within forty days of the date of this order; and it is further

Ordered, that security for costs herein be fixed in the sum of Five Hundred (500) Dollars.

Dated, October 17, 1944.

Robert H. Jackson, A Justice of the Supreme Court of the United States.

[fols. 77-78] Citation in usual form, showing service on Edward S. Corsi, et al., omitted in printing.

[fol. 79] IN THE SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1944

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD

To the Clerk of the Supreme Court of the State of New York, Albany County:

You are hereby requested to make a transcript of record to be filed in the Supreme Court of the United States pursuant to an appeal allowed in the above-entitled cause and to include in such transcript the following papers:

1. Complaint.
2. Answer.
3. Stipulation Presenting Issues.
4. Judgment at Special Term.
5. Order for Judgment at Special Term.
6. Opinion of Justice Murray at Special Term.
7. Notice of Appeal to the Appellate Division of the Supreme Court State of New York.
8. Judgment of Reversal Entered upon Order of Appellate Division.
9. Order of Reversal in Appellate Division.
10. Opinion of Appellate Division.
11. Notice of Appeal to the Court of Appeals.

[fol. 80] 12. Opinion of Court of Appeals.

13. Remittitur of the Court of Appeals.
14. Order on Remittitur of the Court of Appeals.
15. Judgment on Remittitur of the Court of Appeals.
16. Order Allowing Appeal to the Supreme Court of the United States.
17. Petition for Appeal, Assignment of Errors and Prayer for Reversal.
18. Statement as to Jurisdiction on Appeal.
19. Statement Opposing Jurisdiction and Motion to Dismiss or Affirm.
20. Bond on Appeal.
21. Citation and Return Thereon.

Dated at Albany, New York, on October 26, 1944.

Daniel J. Dugan, Attorney for Appellant, 90 State Street, Albany 7, New York.

To: Hon. Nathaniel L. Goldstein, Attorney-General of the State of New York, Attorney for Appellees, The Capitol, Albany, New York.

[fol. 81] STATE OF NEW YORK,
City & County of Albany, ss:

Margaret Hofelich, being duly sworn, deposes and says that she is over the age of twenty-one years; that on the 26th day of October, 1944, she served the annexed Praecipe upon Hon. Nathaniel L. Goldstein, Attorney-General of the State of New York and Attorney for the Appellees, by depositing a copy thereof in a postoffice box maintained by the United States Government in The National Savings Bank of the City of Albany, New York, contained in a securely closed post-paid wrapper directed to said Hon. Nathaniel L. Goldstein, Attorney-General, The Capitol, Albany, New York, Attention: Wendell P. Brown, Esq., First Assistant Attorney-General.

Margaret Hofelich.

Sworn to before me this 26th day of October, 1944. Evelyn A. Croscup, Comr. of Deeds, Albany, New York.

[fol. 82] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 83] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE PORTIONS OF THE RECORD TO BE PRINTED—Filed November 18, 1944

SIR:

Please Take Notice, that the within is a true copy of the appellant's statement of points to be relied upon, and designation of the portions of the record to be printed.

Dated at Albany, New York, November 15th, 1944.

Daniel J. Dugan, Attorney for Appellant, Office and Post Office Add: 90 State Street, Albany 7, New York.

To: Hon. Nathaniel L. Goldstein, Attorney-General of the State of New York, Attorney for Appellees, The Capitol, Albany, New York.

Comes now the appellant in the above-entitled cause and states that the points upon which it intends to rely herein are the same as the nine items listed in the Assignment of Errors heretofore filed.

[fol. 84] And the appellant further states that it considers that the portions of the record necessary for the consideration of this cause are all the same portions listed in the transcript of record filed herein and therein indicated as the portions of the record to be included in said transcript except the Bond on Appeal.

Daniel J. Dugan, Counsel for Appellant.

Service of a copy of the foregoing Statement and Designation is acknowledged this 15th day of November, 1944.

Nathaniel L. Goldstein, Attorney-General of the State of New York, Attorney for Appellees.

[fol. 84a] [File endorsement omitted.]

[fol. 85] Supreme Court of the United States

Order Postponing Further Consideration of the Question of Jurisdiction—December 18, 1944

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of the jurisdiction of this Court is postponed to the hearing of the case on the merits.

Endorsed on cover: Enter Daniel J. Dugan. File No. 49,144. New York Supreme Court. Term No. 691. Railway Mail Association, Appellant, vs. Edward S. Corsi, as Industrial Commissioner of the State of New York, et al. Filed November 18, 1944. Term No. 691 O. T. 1944.

FILE COPY

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CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 691

RAILWAY MAIL ASSOCIATION,
Appellant,

vs.

EDWARD S. CORSI, AS INDUSTRIAL COMMISSIONER OF THE STATE OF NEW YORK, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW YORK.

STATEMENT AS TO JURISDICTION

DANIEL J. DUGAN,
Counsel for Appellant.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 691

RAILWAY MAIL ASSOCIATION,

Appellant,

against

EDWARD S. CORSI, AS INDUSTRIAL COMMISSIONER OF THE STATE OF NEW YORK, AND NATHANIEL L. GOLDSTEIN, AS ATTORNEY-GENERAL OF THE STATE OF NEW YORK,

Appellees

JURISDICTIONAL STATEMENT

In compliance with Rule 12 of the Rules of the Supreme Court of the United States, the applicant, Railway Mail Association, submits herewith its statement showing the basis of the jurisdiction of the Supreme Court of the United States to review on appeal the final judgment of the Supreme Court of the State of New York entered in this cause upon the order and remittitur of the Court of Appeals of the State of New York which remittitur bears date July 19, 1944, and upon which said final judgment was entered in said Clerk's Office on July 31, 1944. Application for an order allowing an appeal to this Court was presented on October 11, 1944, to Mr. Justice Robert H. Jackson, a Justice of the Supreme Court of the United States.

Statutory Provision Sustaining Jurisdiction

The Act of Congress of February 13, 1925, Chapter 229, section 1, 43 Stat. 936, effective May 13, 1925, amending and reenacting Section 237 (a) of the Judicial Code (U. S. Code, Annotated, Title 28, Section 344) provides:

> "A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, * * * where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error. The writ shall have the same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such State Court, and may, in its discretion, award execution or remand the cause to the court from which it was removed by the writ."

The Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 466, amending section 2 of the Act of Congress of January 31, 1928, Public, numbered 10, Seventieth Congress; hereinbefore cited, provides:

> "Sec. 2. The statutes regulating the right to a writ of error, defining the relief which may be had thereon, and prescribing the mode of exercising that right and of invoking such relief, including the provisions relating to costs, supersedeas, and mandate, shall be applicable to the appeal which the preceding section substitutes for a writ of error."

The Statute of the State, the Validity of Which is Involved

The statutes of the State of New York and portions thereof, the validity of which is drawn into question in this cause, are Sections 41, 43 and 45 of the Civil Rights Law of

the State of New York as amended in 1940 and 1942, being Chapter 6 of the Consolidated Laws of said State.

The validity of Sections 701, Subdivision 5, and 715 of Article 20 of the Labor Law of the State of New York, being Chapter 31 of the Consolidated Laws of said State, was not drawn in question but these Sections of the Labor Law were relied upon by the appellant upon its contention that they and Sections 41, 43 and 45 of the Civil Rights Law were related statutes and should be read together as part of a unitary system and so read would bring into play the denial of equal protection under the Fourteenth Amendment of the United States Constitution for the reason that under the Labor Law provisions employees of the State or its political subdivisions were exempted from the application and effect of Article 20 of the Labor Law.

Said statutes are herein set out verbatim as follows:

McKinney's Consolidated Laws of New York, Book 8 Civil Rights Law:

Section 41. Penalty for violation.

"Any person who or any agency, bureau, corporation or association which shall violate any of the provisions of sections forty, forty-a, forty-b or forty-two or who or which shall aid or incite the violation of any of said provisions and any officer or member of a labor organization, as defined by section forty-three of this chapter, or any person representing any organization or acting in its behalf who shall violate any of the provisions of section forty-three of this chapter or who shall aid or incite the violation of any of the provisions of such section shall for each and every violation thereof be liable to a penalty of not less than one hundred dollars nor more than five hundred dollars, to be recovered by the person aggrieved thereby or by any resident of this state, to whom such person shall assign his cause of action, in any court of competent jurisdiction in the county in which the plaintiff or

the defendant shall reside; and such person and the manager or owner of or each officer of such agency, bureau, corporation or association, and such officer or member of a labor organization or person acting in his behalf, as the case may be shall, also, for every such offense be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars, or shall be imprisoned not less than thirty days nor more than ninety days, or both such fine and imprisonment. As amended L. 1918, c. 196; L. 1932, c. 234, sec. 2; L. 1940, c. 9, sec. 2; L. 1941, c. 893, sec. 2; L. 1942, c. 478, eff. April 17, 1942."

Section 43. Discrimination by labor organizations prohibited.

"As used in this section, the term 'labor organization' means any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining, or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection. No labor organization shall hereafter, directly or indirectly, by ritualistic practice, constitutional or by-law prescription, by tacit agreement among its members, or otherwise, deny a person or persons membership in its organization by reason of his race, color or creed, or by regulations, practice or otherwise, deny to any of its members, by reason of race, color or creed, equal treatment will all other members in any designation of members to any employer for employment, promotion or dismissal by such employer. Added L. 1940, c. 9, sec. 1, eff. Feb. 14, 1940."

Section 45. Powers of administration vested in industrial commissioner:

"The industrial commissioner may enforce the provisions of sections forty-two, forty-three and forty-

four of this chapter. For this purpose he may use the powers of administration, investigation, inquiry, subpoena, and hearing vested in him by the labor law; he may require submission at regular intervals or otherwise of information, records and reports pertinent to discriminatory practices in industries. Added L. 1942, c. 677, eff. May 6, 1942."

McKinney's Consolidated Laws of New York, Book 30, Labor Law:

Section 701. Definitions.

"5. The term 'labor organization' means any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining, or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection and which is not a company union as defined herein."

Section 715. Application of article.

"The provisions of this article shall not apply to the employees of any employer who concedes to and agrees with the board that such employees are subject to and protected by the provisions of the national labor relations act or the federal railway labor act or to employees of the state or of any political or civil subdivision or other agency thereof, or to employees of charitable, educational or religious associations or corporations. Added L. 1937, c. 443, sec. 1, eff. July 1, 1937."

Nature of Case and Basis of Jurisdiction

The plaintiff brought this action against the Industrial Commissioner of the State of New York and the Attorney-General of the State of New York to procure a declaratory judgment of the Supreme Court of said State pursuant to Section 473 of the Civil Practice Act of the State of New

York and Rules of Civil Practice 210-214 of the State of New York for a determination:

1. That Sections 41, 43 and 45 of the Civil Rights Law of the State of New York and the provisions of Article 20 of the Labor Law have no application and do not apply to the plaintiff, Railway Mail Association, its members and Division and Branch Associations; and that the Railway Mail Association is not a labor organization within the meaning or contemplation of such laws.

2. That if sought to be applied to the plaintiff herein such laws are in contravention to the Constitution of the United States, Article I, Section 8, Subdivision 7; and of Articles Fifth and Fourteenth of the Amendments to said Constitution and to the provisions of Section 6 of Article I of the Constitution of the State of New York, and

3. That the Supreme Court declare and determine the rights of the parties herein.

4. And for further and consequential relief that the Industrial Commissioner of the State of New York be enjoined from taking any action or procedure under the aforesaid provisions of the Civil Rights and Labor Laws against the plaintiff or its Division or Branch Associations within the State of New York, or the officers or members thereof, and for such other and further relief as may be legal and equitable in the premises.

In substance, the plaintiff complains of an attempt on the part of the Industrial Commissioner of the State of New York to declare the plaintiff to be a labor organization within the meaning of Article 20 of the Labor Law and Section 43 of the Civil Rights Law of the State of New York, and to coerce the plaintiff to admit into its membership contrary to the provisions of its constitution. (See Complaint, paragraphs 6 to 12 inclusive; fols. 8-48.)

The plaintiff is a membership fraternal beneficiary corporation organized in the year 1898 under the laws of the State of New Hampshire, and has its principal office at the City of Portsmouth in that State. It was organized under the corporate name of "National Association of Railway Postal Clerks" which name was changed in 1904 to "Railway Mail Association" (fols. 11-12; fols. 91-93). It has no capital stock and was not organized for profit.

As stated in its Charter, "the object for which this corporation is established is to conduct the business of a fraternal beneficiary association for the sole benefit of its members and beneficiaries and not for profit; to promote closer social relationship among Railway Postal Clerks, to better enable them to perfect any movement that may be for their benefit as a class or for the benefit of the Railway Mail Service; to provide relief for its members and their beneficiaries and make provisions for the payment of benefits to them in case of death, sickness, temporary or permanent physical disability, either as a result of disease, accident or old age."

Since September, 1913, plaintiff has been conducting the business of a fraternal benefit insurance corporation within the State of New York under the applicable provisions of the Insurance Law of said State and by the authority of the Superintendent of Insurance (Complaint, fol. 16; Letter of Superintendent of Insurance, dated September 4, 1913; Judgment, fols. 73-74). Membership is comprised of two classifications, one of which is a general or non-beneficiary membership, and the other is a beneficiary or full membership. The beneficiary members contribute to a benefit fund established by the levy upon said beneficiary members of assessments which benefit fund is created and maintained for the purpose of paying claims of such beneficiary members or their beneficiaries resulting from death or disability occasioned to said beneficiary members through external, vio-

lent and accidental means. The entire membership of the Association at the time of the commencement of this action comprised upwards of 22,000 members, 99% of whom hold beneficiary or full membership (Complaint, fols. 20-21).

Under Article III of the Constitution of said Railway Mail Association membership therein is confined to regular male Railway Postal Clerks or male substitute Railway Postal Clerks of the United States Railway Mail Service who are of the Caucasian race or are native American Indians. (Complaint, fols. 14-15)

It was the contention of the plaintiff set forth in its Complaint that its membership being drawn from male Railway Mail Clerks and substitutes in the Railway Mail Service whose appointments, promotions and classifications are defined and regulated under the Civil Service of the United States and the laws of the United States appertaining to the Federal Postal System, and in view of the purposes stated in plaintiff's Certificate of Incorporation the provisions of Sections 41, 43 and 45 of the Civil Rights Law and Subdivision 5 of Section 701 and Section 715 of the Labor Law of the State of New York did not apply to it because it was not a labor organization within the meaning of Section 43 of the Civil Rights Law and of Subdivision 5 of Section 701 and Section 715 of the Labor Law as the purposes of these laws being related to each other were aimed at and intended to apply to labor relations between employers and employees in the industrial system of our society and had no application to workers employed in the Civil Service of the United States. That if applied to the plaintiff, its division and branch associations and its members such statutes would be contrary to and violative of the provisions of Section 6 of Article 1 of the Constitution of the State of New York in that it would deny to the plaintiff and its members, and its division and branch associations due process and equal protection of law and

would be and constitute an unlawful and unreasonable abridgment of the property rights of the plaintiff and its division and branch associations, and would offend the due process provisions of the Fourteenth Amendment to the Constitution of the United States in that said provisions of the Civil Rights Law of the State of New York if applied to the plaintiff, its division and branch associations and its members created arbitrary, capricious and unreasonable regulations and denied to the plaintiff, its division and branch associations and members within the State of New York the equal protection of the laws and deprived the plaintiff, its division and branch associations and its members of their property without due process of law; and is an invasion of, and in contravention to Subdivision 7 of Section 8 of Article I of the Constitution of the United States concerning the legislative power of the Congress of the United States to establish postoffices and post-roads.

The issues raised by the pleadings and under stipulation of the parties were presented for determination at the Special Term of the Supreme Court of the State of New York which Court granted judgment for the plaintiff as prayed for in the Complaint upon a construction of the statutes holding that said statutes were without legal force or effect as applied to the plaintiff, its division and branch associations and its members within the State of New York. Upon the appeal to the Appellate Division the judgment at Special Term was reversed and the Complaint of the plaintiff was directed to be dismissed. The Appellate Division construing Sections 41, 43 and 45 of the Civil Rights Law as to apply to the plaintiff, its division and branch associations and its members and holding that the statutes as thus construed were not repugnant to the due process and equality provisions of the Fourteenth Amendment and that said statutes did not invade or violate the postoffice, post-roads clause of Article I, Section 8, Subdivision 7 of

the United States Constitution granting exclusive power to the Federal Government to establish postoffices and post-roads.

In the Court of Appeals the plaintiff's contention as to the construction of the statutes was rejected, such Court holding that Sections 41, 43 and 45 of the Civil Rights Law were applicable to the plaintiff, its division and branch associations and its members, the Court declining to apply the *in pari materia* principle of construction to Sections 41, 43 and 45 of the Civil Rights Law and Subdivision 5 of Section 701 and Section 715 of the Labor Law which the plaintiff had contended were related statutes and should be construed as dependent parts of a unitary plan dealing with related subjects of labor relations. In this way the Court decided that the exemptions of employees in the public service of the State or its subdivisions did not exempt them from the application of Sections 41, 43 and 45 of the Civil Rights Law. The Court, however, did pass upon the constitutional questions presented by the plaintiff under the due process and equality clauses of the Fourteenth Amendment, and the postoffices and post-roads clause of Article I, Section 8, Subdivision 7 of the Constitution of the United States in which exclusive power is granted to the Federal Government to establish post-offices and post-roads, holding adversely to plaintiff's contentions.

Cases Believed to Sustain Jurisdiction

The plaintiff respectfully submits that the questions under the Constitution of the United States properly raised and actually decided by the State Courts and now sought to be presented to this Court are substantial Federal questions which as applied to the circumstances of this cause have not been previously decided by this Court con-

trary to plaintiff's contention and that this Court has jurisdiction to review. That the questions raised under the Constitution of the United States are important and novel in their application to the plaintiff and require analysis and exposition for their determination.

Senn v. *Tilelayer's Protective Union*, 301 U. S. 468;
Hague v. *C. I. O.*, 307 U. S. 496;
Coleman v. *Miller*, 307 U. S. 433;
McGoldrick v. *Berwin-White Coal Co.*, 309 U. S. 33;
Hall v. *DeCuir*, 95 U. S. 485;
Illinois Cent. R. R. Co. v. *Illinois*, 163 U. S. 142.

These questions were duly presented in this cause and have been passed upon by the New York State Appellate Courts and were actually decided by such Courts adversely to the plaintiff's contention. The following additional causes in this Court are cited to sustain jurisdiction:

(a) Under the Due Process Clause of the Fourteenth Amendment.

Coppage v. *Kansas*, 236 U. S. 1;
Wolff Packing Co. v. *Ct. of Ind. Relations*, 262 U. S. 522;
Nebbia v. *New York*, 291 U. S. 502;
Olsen v. *Nebraska*, 313 U. S. 236.

In the *Nebbia* case arising out of a price-fixing statute of the State of New York the Act was challenged as being arbitrary and unreasonable under the due process clause of the Fourteenth Amendment. In the majority opinion a long line of previous cases in this Court was set forth where the legislation under review was sustained under the police powers against the challenge of the due process clause of the Fourteenth Amendment; and in the opinion read for the minority members of this Court a similar

long line of previous cases in this Court was likewise set forth in which this Court had struck down state legislation as being arbitrary and unreasonable. In the majority opinion, page 536, Mr. Justice Roberts says:

"It is clear that there is no closed class or category of businesses affected with a public interest and the function of Courts in the application of the Fifth and Fourteenth Amendments is to determine in each case whether circumstances vindicate the challenged regulation as a reasonable exertion of governmental authority or condemn it as arbitrary or discriminatory."

And at page 539, he continues:

"The Constitution does not secure to anyone liberty to conduct his business in such fashion as to inflict injury upon the public at large, or upon any substantial group of the people. Price control like any other form of regulation is unconstitutional only if arbitrary, discriminatory or demonstrably irrelevant to the policy the legislature is free to adopt and hence an unnecessary and unwarranted interference with individual liberty.

"Tested by these considerations we find no basis in the due process clause of the Fourteenth Amendment for condemning the provisions of the Agricultural and Markets Law here drawn into question."

It is respectfully submitted that the business of the appellant as it is conducted inflicts no injury upon the public at large or upon any substantial group of the people or in any way affects adversely the economic status of any regular or substitute Railway Mail Clerk or of any member of the public. The case at bar is not a tax case, nor a price-fixing case, nor a labor relations case, nor a wage and hour case, nor is the business of the appellant subject to any license regulation. The appellant derives no benefit, economic or otherwise, under the labor relations provisions of New York State's Labor Law and to apply Sections 41,

43 and 45 of the Civil Rights Law to the appellant's organization or to its free choice in the selection of its members, clearly constitutes an arbitrary and unreasonable regulation of its business and is an arbitrary and unreasonable interference with the property rights and the liberty of contract guaranteed by the due process clause of the Fourteenth Amendment to the appellant, its division and branch associations and members.

(b) Under the Postoffice and Post-Roads Clause of Article I, Section 8, Subdivision 7 of the Constitution of the United States.

Re Jackson, 96 U. S. 727;
Re Debs, 158 U. S. 564;
Hall v. *DeCuir*, 95 U. S. 485;
Prigg v. *Pennsylvania*, 16 Peters 539;
Civil Rights Cases, 109 U. S. 18;
Re Rapier, 143 U. S. 110;
Illinois Central R. R. Co. v. *Illinois*, 163 U. S. 142;
Johnson v. *Maryland*, 254 U. S. 51;
Postal Service Act, Dec. 21, 1893, Code Title 39 U. S. C. A;
Code Title 5 U. S. C. A., chapter 12, session 652.

The Postal Service Act, December 21, 1893, Code Title 39 U. S. C. A., creates the postal system in all its various branches and it was the design of Congress thereby to appropriate the entire field of the postal service and its regulation, and the Auxiliary Act of August 24, 1912, c. 389, Section 6, 37 Stat. 555, being Section 652 of Code Title 5 U. S. C. A., manifests a clear intent on the part of Congress to show its concern regarding membership in any society, association, club or other form of organization of postal employees. Congress having established and organized the postal system in all its branches and in varying detail has exercised

the federal power granted to the general government under the Postoffice and Post-Roads clause: The Act of Congress of August 24, 1912, aforesaid, is a regulation affecting the conduct of postal employees in relation to their service, and their right to organize for the improvement of working conditions and for other benefits. The State Act, Sections 41, 43 and 45 of the Civil Rights Law, so far as employees of the postal system are concerned, cannot be tacked onto the regulations made by Congress, for the State is excluded from legislating in this field. The prohibition of State action rests "not upon any consideration of degree but on the entire absence of power on the part of the States to touch the instrumentalities of the United States" (Opinion of Justice Brandeis in *Gilbert* v. *Minnesota*, 254 U. S. 341, citing the *Johnson* case supra).

The exclusive character of the power given to Congress to establish postoffices and post-roads as Mr. Justice Fields said in the Jackson case "has been practically construed since the foundation of the government to authorize not merely the designation of the routes over which the mail shall be carried and the offices where the letters and other documents shall be received to be distributed or forwarded, but the carriage of the mail and all measures necessary to secure its safe and speedy transit, and the prompt delivery of its contents".

In the Debs case, Justice Brewer says:

"What are the relations of the general government to interstate commerce and the transportation of the mails? They are those of direct supervision, control and management. While under the dual system which prevails with us the powers of government are distributed between the state and the nation, and while the latter is properly styled a government of enumerated powers, yet within the limits of such enumeration it has all the attributes of sovereignty, and, in the exercise of those enumerated powers, acts di-

rectly upon the citizen, and not through the intermediate agency of the state.

"The government of the Union, then is, emphatically and truly, a government of the people. In form and in substance it emanates from them. Its powers are granted by them, and are to be exercised directly on them, and for their benefit."

In the Civil Rights cases Justice Bradley after referring to the enumerated powers granted to the general government in the Federal Constitution says at page 18:

"In these cases Congress has power to pass laws for regulating subjects specified in every detail and the conduct and transactions of individuals in respect thereof."

In *In re Rapier*, one of the lottery cases which involved a construction of an act of Congress in excluding from the mails lottery matter, the Court says:

"That power may be abused, furnishes no ground for denial of its existence if the government is to be maintained at all; it must be left to Congress in the exercise of a sound discretion to determine in what manner it will exercise a power which it possesses.

"When the power to establish postoffices and post-roads was surrendered to the Congress it was as a complete power, and the grant carried with it the right to exercise all the powers which made that power effective. It is not necessary that Congress should have the power to deal with crime or immorality within the states in order to maintain that it possesses the power to forbid the use of the mails in aid of the perpetration of crime or immorality."

In *Hall* v. *DeCuir*, Justice Clifford in the course of his opinion said:

"If Congress have a constitutional power to regulate a particular subject, and they do actually regulate it in a given

manner and in a certain form, it cannot be that the State Legislatures have a right to interfere, and, as it were, by way of complement to the legislation of Congress, to prescribe additional regulations and what they may deem auxiliary provisions for the same purpose. The Chusan, 2 Story, 466; Sinnot v. Davenport, 22 How. 227, 16 L. Ed. 243.

> "In such a case, the legislation of Congress in what it does prescribe manifestly indicates that it does not intend that there shall be any further legislation to act upon the subject-matter. Its silence as to what it does not do is as expressive of what its intention is as the direct provisions made by it. Prigg v. Com. of Pa., 16 Pet., 539; Gibbons v. Ogden (supra); Bk. v. Smith (supra)."

In *New York Central R. R. Co.* v. *Winfield*, 244 U. S. 147, where the New York State Workmen's Compensation Law as applied to interstate commerce was rejected, as in conflict with the Federal Employee's Liability Act, the above text is repeated.

In arguing for the exclusiveness of federal power to regulate persons, matters and things pertaining to the postal service, we are not conceding that legislation of the pattern presented by the State law in question could withstand the challenge of its validity under the due process clause of the Fifth Amendment to the Federal Constitution. What we do say is that if Congress can regulate what organizations of employees in the postal system may do, it alone has the right, should it see fit to exert it, to pass legislation forbidding discrimination as to the qualifications for membership in the organizations of its employees on the ground of race, creed or color.

The *Price* case, 113 U. S. 218, and the *Martin* case, 203 U. S. 284, merely decided that the Pennsylvania statute under review did not present to the Court a federal question.

The railroads had been sued to recover for injuries to a Railway Mail Clerk in one case and for the death of a Railway Mail Clerk in the other, alleged to have been caused by the negligence of the defendants, and all that was decided was that the Railway Mail Clerk was not a passenger and had no greater rights in the event of being injured in the course of his employment than would have had an employee of the Railroad Company. The Railway Mail Clerk had no special or exceptional immunities because of his employment. He was not a passenger within the meaning of the Act.

(c) The procedure in this case for declaratory judgment with prayer for injunctive relief was authorized under Section 473 of the Civil Practice Act of the State of New York, and the Rules of Civil Practice, Sections 210-214, and is a "case" or "controversy" within the meaning of the judiciary article of the United States Constitution (Const. Article III, Sections 1 and 2).

Nashville, etc. Ry. Co. v. *Wallace*, 288 U. S. 249.
Hoopeston Canning Co. v. *Cullen*, 318 U. S. 313.
Chamberlain Inc. v. *Andrews*, 271 N. Y. 1; affd. 299 U. S. 515; 301 U. S. 714.

In view of the foregoing, it is respectfully submitted that this honorable Court has jurisdiction of the appeal.

RAILWAY MAIL ASSOCIATION,
Appellant.

BY DANIEL J. DUGAN,
Its Counsel.

APPENDIX

Opinion of Court of Appeals

79—N. Y. Opinion—Vol. 293—315

RAILWAY MAIL ASSOCIATION, *Appellant*,

v.

EDWARD S. CORSI, as Industrial Commissioner of the State of New York et al., *Respondents*

Decided July 19, 1944

Appeal from a judgment, entered March 13, 1944, upon an order of the Appellate Division of the Supreme Court in the third judicial department which reversed, on the law, a judgment of the Supreme Court, Albany County, in favor of plaintiff, entered upon an order of the court at Special Term (Murray, J.; opinion 180 Misc. 868); (1) declaring, among other things, that plaintiff is not a labor organization within the meaning of section 43 of the Civil Rights Law, and (2) restraining the defendants, the Industrial Commissioner and Attorney-General of the State of New York, respectively, from enforcing said statute against the plaintiff. The Appellate Division directed a dismissal of the complainant and the judgment appealed from so provides. At the commencement of the action Frieda S. Miller was Industrial Commissioner and John J. Bennett, Jr., was Attorney-General. Respondents now hold and occupy their respective offices and have been substituted as parties defendant.

Daniel J. Dugan and *Daniel J. Dugan, Jr.*, for appellant.

Nathaniel L. Goldstein, Attorney-General (*Wendell P. Brown, Orrin G. Judd* and *Henry S. Manley* of counsel), for respondents.

LEHMAN, Ch. J.:

The plaintiff is a foreign corporation organized under the laws of the State of New Hampshire. It conducts its affairs through Division and Branch Associations. Thir-

teen Branch Associations are located in different parts of the State of New York. Membership in the Association is confined by the terms of its constitution to "any regular male Railway Postal Clerk or male substitute Railway Postal Clerk of the United States Railway Mail Service who is of the Caucasian race or a native American Indian." Section 43 of the Civil Rights Law (added by L. 1940 chapter 9) provides in part that "*no labor organization* shall hereafter, directly or indirectly * * * deny a person or persons membership in its organization by reason of his race, color or creed * * *." Violation of the Statute is a misdemeanor punishable by fine or imprisonment or both. The plaintiff has brought an action for a declaratory judgment "that sections 41, 43 and 45 of the Civil Rights Law of the State of New York and the provisions of the Labor Law, * * * do not apply to the plaintiff * * *" and that the Railway Mail Association is not a labor organization within the meaning and contemplation of said laws." The plaintiff also asks the court to declare "that if sought to be applied to the plaintiff herein such laws are in contravention to the Constitution of the United States, Article I, Section 8, Subdivision 7, and of Articles Fifth and Fourteenth of the amendments to said Constitution and to the provisions of Section 6 of Article 1 of the Constitution of the State of New York." As "consequential relief" the plaintiff asks that "the Industrial Commissioner of the State of New York be enjoined from taking any action or procedure against the plaintiff or its Division or Branch Associations within the State of New York, or the officers or members thereof."

The defendants have admitted all the allegations contained in the complaint except the allegation that the plaintiff is not a "labor organization" within the meaning of the statute. The issues raised by the pleading were by stipulation of the parties submitted to the court at Special Term "as though upon a motion by the plaintiff for summary judgment as prayed for in the complaint and upon a cross motion by the defendants that the complaint be dismissed." No testimony was offered at the hearing and no affidavits were submitted but the parties stipulated

that specified documents, books and pamphlets may be considered as exhibits. At Special Term the plaintiff prevailed and judgment in its favor was granted declaring that "plaintiff is not a labor organization within the meaning or contemplation of Sections 41, 43 and 45 of the Civil Rights Law of the State of New York nor within the meaning and contemplation of Article 20 of the Labor Law of the State" and enjoining the Industrial Commissioner "from taking any action or procedure to apply or enforce" these statutes. The Appellate Division unanimously reversed on the law the judgment in favor of the plaintiff and granted judgment in favor of the defendants dismissing the complaint. The dismissal of the complaint is based upon the conclusion of the court that the provisions of section 43 of the Civil Rights Law apply to the plaintiff Association and may be enforced against it by the Industrial Commissioner. If we agree with that conclusion we need not consider whether if section 43 of the Civil Rights Law did not apply to it, the plaintiff could obtain in an action for a declaratory judgment the relief it demands.

Section 43 of the Civil Rights Law, which forbids a "labor organization" to deny membership to a person by reason of his race, color or creed, provides its own definition of the term "labor organization". *As used in that section*, the term "labor organization" means any organization "which exists and is constituted for the purpose in whole or in part of collective bargaining, *or of dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection.*" The purpose for which the plaintiff is constituted, as formulated in its charter, is "to conduct the business of a fraternal beneficiary association for the sole benefit of its members and beneficiaries and not for profit; to promote closer social relationship among Railway Postal Clerks; *to better enable them to perfect any movement that may be for their benefit as a class* or for the benefit of the Railway Mail Service; to provide relief for its members and their beneficiaries and make provisions for the payment of benefits to them, in case of death, sickness, temporary or permanent physical disability, either as a result of disease, accident or old age." (Italics through this opinion are supplied.)

The purpose of "collective bargaining" is not included in the objects for which the plaintiff exists and is constituted. Membership in the plaintiff is confined to mail clerks who are civil service employees and the plaintiff and the defendants agree that the terms and conditions of employment of civil service employees of the Post Office and of other departments or agencies of the Federal, State or City government must be fixed by governmental authority and not by collective bargaining. The purpose of "mutual aid or protection" and in proper case of discussing grievances with their employer and presenting demands or suggestions of their members *as a class,* is included by plain implication in the purposes set forth in the charter. Indeed, among the duties of the Industrial Secretary of the organization, prescribed in its constitution, is the duty to "assist in the presentation of grievances pertaining to service conditions and endeavor to secure adjustment of such through administrative action." The plaintiff joined the American Federation of Labor, which purports to be a federation of labor unions. It is denominated a labor union in the Bulletin of the Department of Labor of the United States. It is described as a trade union or labor organization in publications and reports concerning phases of the labor movement by students and organizations of recognized authority, including a recent publication of the Twentieth Century Fund. In its own publications the plaintiff Association claims the credit for bringing "to every railway postal clerk many material benefits" and for "many additional millions of dollars brought to the pockets of railway postal clerks each year by the efforts of the Association," and it points out that "reforms always come as the result of demands from the worker. If better conditions are worth securing, they must come as the result of organized effort." An association constituted for the purpose of "organized effort" and the presentation of concerted demands of workers as a class in order to secure material benefit and reforms in conditions of employment is a "labor organization" both in common parlance and as defined in section 43 of the Civil Rights Law.

That is true though the association may exist and be constituted "in part" for other purposes. In this case the plaintiff association conducts, pursuant to its charter, "the business of a fraternal beneficiary association for the sole benefit of its members and beneficiaries and not for profit" and it furnishes insurance at cost to its members. Pursuant to its charter and ritual the plaintiff also seeks "to promote closer social relations among Railway Postal Clerks" or rather among white Railway Postal Clerks eligible for membership in its Association. If these were its only objects it would not be a labor organization and would be free to admit to or exclude from membership such persons as it chose, for good reason, for bad reason or for no reason, but it is undisputed that its objects are not so limited. Indeed, in its own publication it has said: "The activity of the Association is directed along two lines, promoting the welfare of railway postal clerks by improving conditions under which they work and providing benefits for disability and death due to accidental means." To carry out the second activity within the State of New York, the plaintiff Association applied for and received permission to do so from the Superintendent of Insurance, though he ruled that no license was necessary. The facts that the Association is lawfully providing insurance within the State for its members does not tend to show that its members are not associated in an organization which exists and is constituted "in part" for objects which mark it as a "labor organization" as defined in the Civil Rights Law.

The plaintiff Association successfully urged at Special Term that the definition in the Civil Rights Law must be read in connection with the provision of article 20 of the Labor Law entitled "New York State Labor Relations Act" and that so read the Association is excluded from its terms. Article 20 of the Labor Law is enacted primarily as an appropriate measure for "the protection by law of the right of employees to organize and bargain collectively" (Labor Law, Sec. 700). Like section 43 of the Civil Rights Law, article 20 of the Labor Law provides its definition "*when used in this article*" of the term "labor organization" and other terms. (Sec. 701.) The words "when used

in this article" show a legislative intent to create special definitions of limited application which are not to be enlarged or restricted by other definitions of the same terms contained in other statutes or in other parts of the Labor Law. (*Metropolitan Life Ins. Co.* v. *State Labor Relations Board*, 280 N. Y. 194.)

The definitions of "labor organization" in section 43 of the Civil Rights Law and in article 20 of the Labor Law are the same except in one clause and the variation is not here material. The contention of the plaintiff Association is not based upon that variation. Its reliance is upon section 715 of the Labor Law which provides: "The provisions of this article shall not apply to the employees of any employer who concedes to and agrees with the board that such employees are subject to and protected by the provisions of the national labor relations act or the federal railway labor act or to employees of the state or of any political or civil subdivision or other agency thereof, or to employees of charitable, educational or religious associations or corporations."

The purpose of section 715 is expressed in plain language. It does not purport to change the definition of the term "labor organization." It does not in terms or in effect prohibit the formation of labor organizations as so defined among the employees of any employer, but it does exclude *from the application of article 20* of the Labor Law the employees in specified employment and it denies to such employees, whether members of labor organizations or not, the benefit of the provisions of the statute devised for "the protection of employees' right to organize and bargain collectively." The exclusion of some categories of employees from the application of the statute constitutes a legislative determination that the "public policy of the state" as "declared" in the same article would not be promoted by "encouraging the practice and procedure of collective bargaining" by government employees. The grounds for that determination are plain. Section 43 of the Civil Rights Law is intended to promote the public policy securing equality of industrial opportunity for workers, regardless of race, creed or color. There is no

indication either in the Civil Rights Law or in the Labor Law that categories of workers who are not entitled to avail themselves of the benefit of the provisions of a statute enacted for the protection of a right of collective bargaining may not lawfully form "labor organizations" for their "mutual aid or protection" in their employment and for the presentation of their grievances as a class and of demands for reform in the terms and conditions of their employment, nor is there anything in the Civil Rights Law which suggests that workers within categories excluded from the application of the State Labor Relations Law are also excluded from the application of the Civil Rights Law.

There remains only the question whether a statute intended to restrict discrimination in membership by labor organizations is constitutional if applied to the plaintiff Association. The plaintiff does not challenge the validity of a statute which would prohibit such discrimination by "labor organizations" to which the provisions of article 20 of the Labor Law apply. It challenges the validity of the statute, if construed in manner broad enough to include the plaintiff in its scope, on the ground that the exclusion of categories of workers from the application of article 20 and their inclusion in the application of section 43 creates "arbitrary, capricious and unreasonable classifications" which denies to the plaintiff organization the equal protection of law guaranteed by the Fourteenth Amendment of the Federal Constitution and denies to the plaintiff due process of law. The plaintiff challenges the validity of the statute also on the ground that it constitutes an invasion by the State into the field of postal service which under the Constitution is within the sole jurisdiction of the government of the United States.

The plaintiff in its brief makes abundantly clear the grounds upon which the Legislature might reasonably deny to civil service workers in the employ of a governmental unit the benefit of a statute intended for the protection of the right of workers in other employment to bargain collectively with their employers. In its own official publication the plaintiff also makes abundantly clear the grounds

upon which the categories of workers excluded from the application of the provisions of article 20 of the Labor Law may reasonably be included in the application of the provisions of the Civil Rights Law designed to give workers of every race, creed or color equality of opportunity to join organizations intended for collective action to improve the condition of employment of the workers. In its official magazine, "Railway Post Office," the plaintiff published an article by its Industrial Secretary in which it said: "Only through collective action have workers ever improved wage and working standards, but it is particularly true today that the worker whether in industries or *the government service* who is not a member of his group organization is merely an unheard voice crying in the wilderness." Whether or not these statements are wholly accurate is immaterial. At least they are not without foundation and the Legislature does not act arbitrarily or capriciously when it determines that no association of workers, whether in industry or in the civil service, which undertakes to speak and act collectively for such workers in improving wages and working standards may deny membership to a worker because of race, creed or color relegating him to the wilderness where he must cry unheard.

The statute so construed does not impinge upon the powers of the Federal Government to conduct the mail service. The United States Government has recognized the right of mail clerks to organize for collective action in the presentation of grievances though not for collective bargaining. A statute in general terms which prohibits all labor organizations within this State, including organizations of workers in government service, from discriminating on the ground of race, creed or color violates no public policy of the United States, does not interfere with or impede any government service and invades no field from which the State is excluded by the Constitution.

The judgment should be affirmed, with costs.

Loughran, Rippey, Lewis, Conway, Desmond and Thacher, J. J., concur.

Judgment affirmed.

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IN THE

Supreme Court of the United States

October Term, 1944.

No. 691

RAILWAY MAIL ASSOCIATION,

Appellant,

against

EDWARD S. CORSI, as Industrial Commissioner of the State of New York, and NATHANIEL L. GOLDSTEIN, as Attorney-General of the State of New York,

Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW YORK.

APPELLANT'S BRIEF IN OPPOSITION TO APPELLEES' MOTION TO DISMISS THE APPEAL OR AFFIRM THE JUDGMENT APPEALED FROM.

DANIEL J. DUGAN,
Counsel for Appellant.

ISADORE BOOKSTEIN,
of Counsel.

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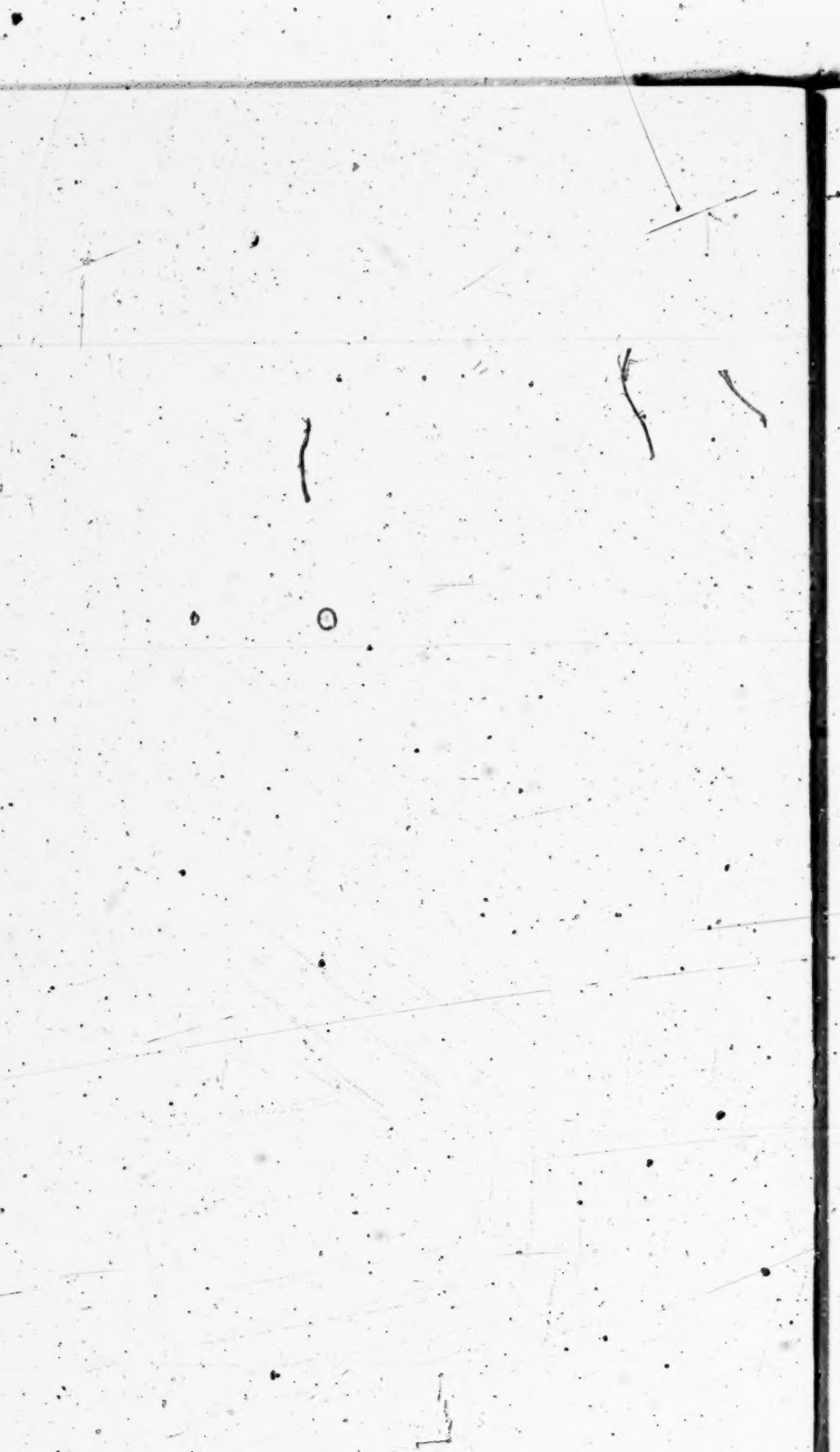

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against

EDWARD S. CORSI, as Industrial Commissioner of the State of New York, and NATHANIEL L. GOLDSTEIN, as Attorney-General of the State of New York,

Appellees.

APPELLANT'S BRIEF IN OPPOSITION TO APPELLEES' MOTION TO DISMISS THE APPEAL OR AFFIRM THE JUDGMENT APPEALED FROM.

Statement.

To the Honorable the Supreme Court of the United States:

The appellant submits this brief under the related provisions of paragraph 3 of Rule 7 and paragraph 3 of Rule 12 of the Rules of this Court, the appellees having included in their typewritten statement opposing jurisdiction a motion to dismiss or affirm.

Appellant begs leave to direct the court's attention to its jurisdictional statement filed herein and to the cases cited in support thereof which are believed to sustain jurisdiction.

The federal questions presented under the Constitution of the United States upon the postoffice and post-roads clause (Article I, Section 8, Subdivision 7) and the due process clause of the Fourteenth Amendment have not been previously presented to or decided by this Court in similar circumstances or in a setting like this cause presents. The questions raised are both novel and important and as applied to the appellant, a membership corporation, and its members, present for determination a new experiment in State legislation of a delicate matter in the field of sociology closely analogous to the personal freedoms guaranteed in the Federal Constitution. They are important because of the limitations sought to be laid on individual liberty, the liberty of contract and the ownership of property.

The question of discrimination when applied to the case at bar is a sociological matter which, in the absence of a constitutional grant from the people to the government, cannot be regulated under the State Police Powers. Such discrimination is not unjust. It is a preference causing no injustice to anyone.

It concerns a social relationship which must rest on voluntary action. The law cannot coerce its performance. We are all left free to choose. This is a personal and constitutional right beyond the power of legislation. The choice is inherent in the person. Tolerance may broaden the choice and benevolence may soften to the point of common acceptance. Education and the spirit of Christianity may efface

the thought of social differences. Coercive legislation is not the remedy.

Under the postoffice and post-roads clause exclusive power to regulate and control the vast postal system in all its ramifications and details was given to the Federal Government. In the field of the postal system the State is excluded from legislating. The prohibition of State action rests "not on any consideration of degree but on the entire absence of power on the part of the States to touch the instrumentalities of the United States" (Opinion of Justice Brandeis in Gilbert v. Minnesota, 254 U. S. 341).

It is respectfully submitted, that the important points which this case presents require examination, analysis and exposition calling for printed and extended argument.

Summary of Argument.

1. As applied to the appellant, its division and branch associations and its members, Section 43 and the related Sections 41 and 45 of the Civil Rights Law of the State of New York are invalid as offending the due process clause of the Fourteenth Amendment to the Constitution of the United States because such laws constitute an arbitrary, unreasonable and capricious regulation of the right of selection to membership and an abridgment of the property rights and the right to liberty of contract of the appellant, its division and branch associations and members.

2. Is an invasion of and is in contravention to Article I, Section 8, Subdivision 7 of the Constitution of the United States.

3. The procedure in this case for declaratory judgment with prayer for injunctive relief presents a "case" or "controversy" within the meaning of the judiciary article of the United States Constitution (Article III, Sections 1 and 2).

In our Jurisdictional Statement and Cases Cited to Sustain Jurisdiction we have cited the following cases, and analyzed some of them:

Under the Fourteenth Amendment:

Coleman v. Miller, 307 U. S. 433
Coppage v. Kansas, 236 U. S. 1
Hague v. C.I.O., 307 U. S. 496
Hall v. DeCuir, 95 U. S. 485
Illinois Central R. R. Co. v. Illinois, 163 U. S. 142
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Nebbia v. New York, 291 U. S. 502
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In view of the foregoing it is respectfully submitted that this Honorable Court has jurisdiction of the appeal, that substantial constitutional questions are presented and that the motion to dismiss or affirm should be denied and probable jurisdiction noted.

RAILWAY MAIL ASSOCIATION,
Appellant.
By DANIEL J. DUGAN,
Its Counsel.
ISADORE BOOKSTEIN,
Of Counsel.

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IN THE

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Counsel for Appellant.

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POINT I.

As applied to the appellant, its division and branch associations and its members, Section 43 and the related Sections 41 and 45 of the Civil Rights Law of the State of New York are invalid as offending the due process clause of the Fourteenth Amendment to the Constitution of the United States because such laws constitute an arbitrary, unreasonable and capricious regulation of the right of selection to membership and an abridgment of the property rights and the right to liberty of contract of the appellant, its division and branch associations and members 27

POINT II.

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Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW YORK.

BRIEF FOR APPELLANT.

Opinions Below.

The opinion of the Court of Appeals of the State of New York is reported in 293 N. Y. 315; the opinion of the Appellate Division in 267 App. Div. 470; and the opinion of the Special Term in 180 Misc. 868.

Jurisdiction.

This appeal is taken pursuant to Section 237 (a) of the Judicial Code of the United States (28 U. S. C. A. Section

344 (a)) and the Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 466, amending Section 2 of the Act of Congress of January 31, 1928, Public, numbered 10, Seventieth Congress, from the final judgment of the Supreme Court of the State of New York, Albany County, entered on July 21, 1944 upon the order and remittitur of the Court of Appeals of the State of New York, which remittitur bears date July 19, 1944. Application for an order allowing an appeal to this Court was presented on October 11, 1944 to Mr. Justice Robert H. Jackson, an Associate Justice of the Supreme Court of the United States, and the order allowing the appeal was signed by him on October 17, 1944. Reference is made to the statement as to jurisdiction filed pursuant to Rule 12 for a concise statement of the grounds on which the jurisdiction of this Court is invoked. On December 18, 1944 an order was entered in this Court in this cause reciting that "Further consideration of the question of the jurisdiction of this Court in this case is postponed to the hearing of the case on the merits."

The Statute of the State, the Validity of Which is Involved.

The statutes of the State of New York and portions thereof, the validity of which is drawn in question in this cause, are Sections 41, 43 and 45 of the Civil Rights Law of the State of New York as amended in 1940 and 1942, being Chapter 6 of the Consolidated Laws of said State.

The validity of Sections 701, Subdivision 5, and 715 of Article 20 of the Labor Law of the State of New York, being Chapter 31 of the Consolidated Laws of said State, was not drawn in question but these sections of the Labor Law were relied upon by the appellant upon its contention that they and Sections 41, 43 and 45 of the Civil Rights Law were related statutes and should be read together as part

of a unitary system and so read would bring into play the denial of equal protection under the Fourteenth Amendment of the United States Constitution for the reason that under the Labor Law provisions employees of the State or its political subdivisions were exempted from the application and effect of Article 20 of the Labor Law.

Said statutes are herein set out verbatim as follows:

McKinney's Consolidated Laws of New York, Book 8, Civil Rights Law:

Section 41. Penalty for violation.

"Any person who or any agency, bureau, corporation or association which shall violate any of the provisions of sections forty, forty-a, forty-b or forty-two or who or which shall aid or incite the violation of any of said provisions and any officer or member of a labor organization, as defined by section forty-three of this chapter, or any person representing any organization or acting in its behalf who shall violate any of the provisions of section forty-three of this chapter or who shall aid or incite the violation of any of the provisions of such section shall for each and every violation thereof be liable to a penalty of not less than one hundred dollars nor more than five hundred dollars, to be recovered by the person aggrieved thereby or by any resident of this state, to whom such person shall assign his cause of action, in any court of competent jurisdiction in the county in which the plaintiff or the defendant shall reside; and such person and the manager or owner of or each officer of such agency, bureau, corporation or association, and such officer or member of a labor organization or person acting in his behalf, as the case may be shall, also, for every such offense be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars, or shall be imprisoned not less than thirty days nor more than ninety days, or both such fine and imprisonment. As amended L. 1918, c. 196; L. 1932, c. 234, sec. 2; L. 1940,

c. 9, sec. 2; L. 1941, c. 893, sec. 2; L. 1942, c. 478, eff. April 17, 1942."

Section 43. Discrimination by labor organizations prohibited.

"As used in this section, the term 'labor organization' means any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining, or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection. No labor organization shall hereafter, directly or indirectly, by ritualistic practice, constitutional or by-law prescription, by tacit agreement among its members, or otherwise, deny a person or persons membership in its organization by reason of his race, color or creed, or by regulations, practice or otherwise, deny to any of its members, by reason of race, color or creed, equal treatment with all other members in any designation of members to any employer for employment, promotion or dismissal by such employer. Added L. 1940, c. 9, sec. 1, eff. Feb. 14, 1940."

Section 45. Powers of administration vested in Industrial Commissioner:

"The industrial commissioner may enforce the provisions of sections forty-two, forty-three and forty-four of this chapter. For this purpose he may use the powers of administration, investigation, inquiry, subpoena, and hearing vested in him by the labor law; he may require submission at regular intervals or otherwise of information, records and reports pertinent to discriminatory practices in industries. Added L. 1942, c. 677, eff. May 6, 1942."

McKinney's Consolidated Laws of New York, Book 30, Labor Law:

Section 701. Definitions.

"5. The term 'labor organization' means any organization which exists and is constituted for the pur-

pose, in whole or in part, of collective bargaining, or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection and which is not a company union as defined herein."

Section 715. Application of article.

"The provisions of this article shall not apply to the employees of any employer who concedes to and agrees with the board that such employees are subject to and protected by the provisions of the national labor relations act or the federal railway labor act or to employees of the state or of any political or civil subdivision or other agency thereof, or to employees of charitable, educational or religious associations or corporations. Added L. 1937, c. 443, sec. 1, eff. July 1, 1937."

Section 473 of the Civil Practice Act providing for declaratory judgment is as follows:

"The supreme court shall have power in any action or proceeding to declare rights and other legal relations on request for such declaration whether or not further relief is or could be claimed, and such declaration shall have the force of a final judgment. Such provisions shall be made by rules as may be necessary and proper to carry into effect the provisions of this section."

Rules of Civil Practice, 210-214 inclusive, are the applied rules.

Rule 210: An action in the supreme court to obtain a declaratory judgment, pursuant to section four hundred and seventy-three of the civil practice act, in matters of procedure shall follow the forms and practice prescribed the civil practice act and rules for other actions in that court.

Rule 211:. The prayer for relief in the complaint shall specify the precise rights and other legal relations of which a declaration is requested and whether further or consequential relief is or could be claimed. If further relief be claimed in the action, the nature and extent of such relief shall be stated.

Rule 212: If, in the opinion of the court, the parties should be left to relief by existing forms of actions, or for other reasons, it may decline to pronounce a declaratory judgment, stating the grounds on which its discretion is so exercised.

Rule 213: In order to settle questions of fact necessary to be determined before judgment can be rendered, the court may direct their submission to a jury. Such verdict may be taken by the court before which the action is pending for trial or hearing. The provisions of sections four hundred and twenty-nine and four hundred and thirty of the civil practice act apply to a verdict so rendered.

Rule 214: Costs in such an action shall be discretionary and may be granted to or against any party to the action.

Postal Service Act, December 21, 1893, 39 U.S.C.A.

U. S. C. A. Title 5—Executive Departments and Government Officers and Employees

Section 652. Removals from Classified Civil Service only for Cause.

No person in the classified civil service of the United States shall be removed therefrom except for such cause as will promote the efficiency of said service and for reasons given in writing, and the person whose removal is sought shall have notice of the same and of any charges preferred against him, and be furnished with a copy thereof, and also be allowed a reasonable time for personally answering the same in writing; and affidavits in support thereof; but no examination of witnesses nor any trial or hearing shall be required except in the discretion of the officer making the removal; and copies of charges, notice of hearing, answer, reasons for removal, and of the order of removal shall be made a part of the records of the proper department or office, as shall also the reasons for reduction in rank or compensation; and copies of the same shall be furnished to the person affected upon request, and the Civil Service Commission also shall, upon request, be furnished copies of the same. Membership in any society, association, club or other form

of organization of postal employees not affiliated with any outside organization imposing an obligation or duty upon them to engage in any strike, or proposing to assist them in any strike, against the United States, having for its objects, among other things, improvements in the condition of labor of its members, including hours of labor and compensation therefor and leave of absence, by any person or groups of persons in said Postal Service, or the presenting by any such person or groups or (of) persons of any grievance or grievances to the Congress or any Member thereof shall not constitute or be cause for reduction in rank or compensation or removal of such person or groups of persons from said service. The right of persons employed in the civil service of the United States, either individually or collectively, to petition Congress, or any Member thereof, or to furnish information to either House of Congress, or to any committee or member thereof, shall not be denied or interfered with. (Aug. 24, 1912, c. 389, sec. 6, 37 Stat. 555.)

Statement of Case.

The appellant brought this action against the Industrial Commissioner of the State of New York and the Attorney-General of the State of New York to procure a declaratory judgment of the Supreme Court of said State pursuant to Section 473 of the Civil Practice Act of the State of New York and Rules of Civil Practice 210-214 of the State of New York, for a determination:

1. That Sections 41, 43 and 45 of the Civil Rights Law of the State of New York and the provisions of Article 20 of the Labor Law have no application and do not apply to the appellant, Railway Mail Association, its members and division and branch associations; and that the Railway Mail Association is not a labor organization within the meaning or contemplation of such laws.

2. That if sought to be applied to the appellant herein such laws are in contravention to the Constitution of the United States, Article I, Section 8, Subdivision 7; and of Articles Fifth and Fourteenth of the Amendments to said Constitution and to the provisions of Section 6 of Article 1 of the Constitution of the State of New York, and

3. That the Supreme Court declare and determine the rights of the parties herein.

4. And for further and consequential relief that the Industrial Commissioner of the State of New York be enjoined from taking any action or procedure under the aforesaid provisions of the Civil Rights and Labor Laws against the appellant or its division or branch associations within the State of NewYork, or the officers or members thereof, and for such other and further relief as may be legal and equitable in the premises.

In substance, the appellant complains of an attempt on the part of the Industrial Commissioner of the State of New York to declare the appellant to be a labor organization within the meaning of Article 20 of the Labor Law and Section 43 of the Civil Rights Law of the State of New York, and to coerce the appellant to admit into its membership contrary to the provisions of its constitution. (Complaint, paragraphs 6 to 12 inclusive, R. 2-4.)

The appellant is a membership fraternal beneficiary corporation organized in the year 1898 under the laws of the State of New Hampshire, and has its principal office at the City of Portsmouth in that State. It was organized under the corporate name of "National Association of Railway Postal Clerks" which name was changed in 1904 to

"Railway Mail Association" (R. 19). It has no capital stock and was not organized for profit.

As stated in its Charter, "the object for which this corporation is established is to conduct the business of a fraternal beneficiary association for the sole benefit of its members and beneficiaries and not for profit; to promote closer social relationship among Railway Postal Clerks; to better enable them to perfect any movement that may be for their benefit as a class or for the benefit of the Railway Mail Service; to provide relief for its members and their beneficiaries and make provisions for the payment of benefits to them in case of death, sickness, temporary or permanent physical disability, either as a result of disease, accident or old age."

Since September, 1913, appellant has been conducting the business of a fraternal benefit insurance corporation within the State of New York under the applicable provisions of the Insurance Law of said State and by the authority of the Superintendent of Insurance (Complaint, R. 3; Letter of Superintendent of Insurance, dated September 4, 1913; Judgment, R. 15). Membership is comprised of two classifications, one of which is a general or non-beneficiary membership, and the other is a beneficiary or full membership. The beneficiary members contribute to a benefit fund established by the levy upon said beneficiary members of assessments which benefit fund is created and maintained for the purpose of paying claims of such beneficiary members or their beneficiaries resulting from death or disability occasioned to said beneficiary members through external, violent and accidental means. The entire membership of the Association at the time of the commencement of this action comprised upwards of 22,000

members, 99% of whom hold beneficiary or full membership (Complaint, R. 4).

Under Article III of the Constitution of said Railway Mail Association membership therein is confined to regular male Railway Postal Clerks or male substitute Railway Postal Clerks of the United States Railway Mail Service who are of the Caucasian race or are native American Indians (Complaint, R. 2).

The Railway Mail Association conducts its business through division and branch associations which are established and maintained in areas in accordance with the division of the Railway Mail Service conducted by the United States Government. These division and branch associations have the right to adopt constitutions, by-laws, rules and regulations not inconsistent with the provisions of the appellant's constitution and must have the approval of the Executive Committee of the Railway Mail Association before they become operative (R. 2-3).

One of these branch associations in the Second Division of the Railway Mail Association in the City of New York has attempted to elect into membership of the Association by selecting applicants for membership who are Railway Postal Clerks of the colored race in violation of Article III of the Constitution of the Railway Mail Association (R. 6). The appellant denied such applicants membership in its organization whereupon at the instance of members of the branch association the Industrial Commissioner of the State of New York intervened asserting that the appellant was a labor organization and that it and its division and branch associations, officers and members within the State of New York were controlled by Section 43 and the related

Sections 41 and 45 of the Civil Rights Law and that appellant, its division and branch associations, officers and members should comply therewith. After taking the position that the Railway Mail Association, its division and branch associations, officers and members were not a labor organization, that the statutes in question did not apply and if sought to be applied would violate certain mentioned provisions of the State and Federal Constitutions, this action for declaratory judgment was instituted.

It was the contention of the appellant set forth in its Complaint that its membership being drawn from male Railway Mail Clerks and substitutes in the Railway Mail Service whose appointments, promotions and classifications are defined and regulated under the Civil Service of the United States and the laws of the United States appertaining to the Federal Postal System, and in view of the purposes stated in plaintiff's Certificate of Incorporation the provisions of Sections 41, 43 and 45 of the Civil Rights Law and Subdivision 5 of Section 701 and Section 715 of the Labor Law of the State of New York did not apply to it because it was not a labor organization within the meaning of Section 43 of the Civil Rights Law and of Subdivision 5 of Section 701 and Section 715 of the Labor Law, as the purposes of these laws being related to each other were aimed at and intended to apply to labor relations between employers and employees in the industrial system of our society and had no application to workers employed in the Civil Service of the United States. That if applied to the appellant, its division and branch associations and its members such statutes would be contrary to and violative of the provisions of Section 6 of Article 1 of the Constitution of the State of New York in that it would deny to the appellant and its members, and its di-

vision and branch associations due process and equal protection of law and would be and constitute an unlawful and unreasonable abridgment of the property rights of the appellant and its division and branch associations, and would offend the due process provisions of the Fourteenth Amendment to the Constitution of the United States in that said provisions of the Civil Rights Law of the State of New York if applied to the appellant, its division and branch associations and its members created arbitrary, capricious and unreasonable classifications and regulations and denied to the appellant, its division and branch associations and members within the State of New York the equal protection of the laws and deprived the appellant, its division and branch associations and its members of their property without due process of law; and are an invasion of and in contravention to Subdivision 7 of Section 8 of Article I of the Constitution of the United States concerning the legislative power of the Congress of the United States to establish postoffices and Post-roads.

Pleadings.

(a) The Complaint

Paragraph 6 of the Complaint is as follows:

"6. That under Article III of the Constitution of said Railway Mail Association membership therein is confined to regular male Railway Postal Clerks or male substitute Railway Postal Clerks of the United States Railway Mail Service who are of the Caucasian race or are native American Indians." (R. 2.)

Paragraphs 15, 16, 17 and 18 are as follows:

"15. That by Section 715 of the said Labor Law, it is provided that,

'The provisions of this article shall not apply to the employees of any employer who concedes to and agrees with the board that such employees are subject to and protected by the provisions of the Nation-

al Labor Relations Act or the Federal Railway Labor Act, or to employees of the state or of any political or civil subdivision or other agency thereof, or to employees of charitable, educational or religious associations or corporations."

"16. That by chapter 9 of the Laws of the State of New York for the year 1940, Article 4, of the Civil Rights Law of the State of New York was amended by adding thereto a new section known as Section 43 which reads as follows:

'Discrimination by labor organizations prohibited. As used in this section, the term "labor organization" means any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining, or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection. No labor organization shall hereafter, directly or indirectly, by ritualistic practice, constitutional or by-law prescription, by tacit agreement among its members, or otherwise, deny a person or persons membership in its organization by reason of his race, color or creed, or by regulations, practice or otherwise, deny to any of its members, by reason of race, color or creed, equal treatment with all other members in any designation of members to any employer for employment, promotion or dismissal by such employer.'

"17. That Section 41 of the Civil Rights Law of the State of New York now in force provides as follows:

'Any person who or any agency, bureau, corporation or association which shall violate any of the provisions of sections forty, forty-a, forty-b or forty-two or who or which shall aid or incite the violation of any of said provisions and any officer or member of a labor organization, as defined by section forty-three of this chapter, or any person representing any organization or acting in its behalf who shall violate any of the provisions of section forty-three of this chapter or who shall aid or incite the violation of any of the provisions of such section shall for each and every violation thereof be liable to a penalty of not less than one hundred dollars nor more than five hundred dol-

lars, to be recovered by the person aggrieved thereby or by any resident of this state, to whom such person shall assign his cause of action, in any court of competent jurisdiction in the county in which the plaintiff or the defendant shall reside; and such person and the manager or owner of or each officer of such agency, bureau, corporation or association, and such officer or member of a labor organization or person acting in his behalf, as the case may be shall, also, for every such offense be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars, or shall be imprisoned not less than thirty days nor more than ninety days, or both such fine and imprisonment.'

"18. That by Section 45 of said Civil Rights Law, being Chapter 677 of the Laws of 1942 and effective on May 6 of said year, it is provided that:

'The industrial commissioner may enforce the provisions of sections forty-two, forty-three and forty-four of this chapter. For this purpose he may use the powers of administration, investigation, inquiry, subpoena, and hearing vested in him by the labor law; he may require submission at regular intervals or otherwise of information, records and reports pertinent to discriminatory practices in industries'." (R. 4-6.)

(b) The Answer

By paragraph 1 of the Answer, defendants deny that the definition of "labor organization" set forth in paragraph 14 of the Complaint is applicable for any purpose except Article 20 of the Labor Law and they further deny that it is applicable to the issues involved here.

By paragraph 2, defendants deny that the statutory provision alleged in paragraph 15 of the Complaint is applicable to issues involved herein (R. 10).

Paragraphs 14 and 15 of the Complaint are, respectively as follows:

"14. That under the provisions of Article 20 of the Labor Law of the State of New York, being Chapter 334 of the laws enacted in 1937, it is provided that under subdivision 5 of Section 701, that,

'The term "labor organization" means any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining, or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection, and which is not a company union as defined herein.'

"15. That by Section 715 of the said Labor Law, it is provided that,

'The provisions of this article shall not apply to the employees of any employer who concedes to and agrees with the board that such employees are subject to and protected by the provisions of the National Labor Relations Act or the Federal Railway Labor Act, or to employees of the state or of any political or civil subdivision or other agency thereof, or to employees of charitable, educational or religious associations or corporations'." (R. 4.)

Defendants deny each and every allegation of paragraph 24 of the Complaint and so much of paragraph 22 of the Complaint as alleges that the plaintiff is not a "labor organization" within the spirit or contemplation of the Labor Law or of the Civil Rights Law of the State of New York.

Paragraphs 22 and 24 of the Complaint are as follows:

"22. Upon information and belief plaintiff alleges that the plaintiff is not a labor organization within the spirit or contemplation of the Labor Law or of the Civil Rights Law of the State of New York aforesaid but on the contrary is a membership corporation authorized to, and carrying on the business of a fraternal beneficiary association for the benefit of its members and their beneficiaries and not for profit.

That plaintiff draws its membership from male clerks engaged in the Railway Mail Service of the United States Government; that such Railway Mail Service

does not involve industrial enterprise; that appointments and promotions in such Railway Mail Service are regulated and controlled by the laws of the United States; that neither the plaintiff nor any of the male Railway Postal Clerks is engaged in industrial enterprise but its members are and constitute a class of civil service employees of the United States Government engaged in and conducting a governmental function exclusive to the Government of the United States and who possess certain peculiar rights and privileges to security and protection in such Government Service and have not the right to strike to enforce any grievance in relation to their service or employment in the Railway Mail Service."

"24. That the provisions aforesaid of the Civil Rights Law if sought to be applied against the plaintiff, its Division and Branch Associations and its members would be contrary to and violative of the provisions of Section 6 of Article 1 of the Constitution of the State of New York in that it would deny to the plaintiff and its members, and its Division and Branch Associations due process and equal protection of law and would be and constitute an unlawful and unreasonable abridgment of the property rights of the plaintiff and its Division and Branch Associations, and would offend the due process provisions of the Fifth and Fourteenth Amendments of the Constitution of the United States in that said provisions of the Labor Law and of the Civil Rights Law of the State of New York would create arbitrary, capricious and unreasonable classifications, and would deny to the plaintiff and its members, and its Division and Branch Associations within the State of New York the equal protection of the laws and would deprive the plaintiff of its property without due process of law; and is an invasion of and in contravention to Subdivision 7 of Section 8 of Article I of the Constitution of the United States concerning the legislative power of the Congress of the United States to establish post offices and post roads."

Paragraph 4 of the Answer is as follows:

"4. Defendants lack knowledge or means of information as to the truth or falsity of the allegation con-

tained in the second sentence of paragraph twenty-two of the complaint, and likewise as to certain allegations contained in other paragraphs of the complaint; and defendants believe that the allegations of paragraph two of the complaint are in certain immaterial respects too broad; but for the purpose of this litigation defendants admit all allegations of the complaint except those denied in the preceding paragraphs of this answer." (R. 10.)

The issues raised by the pleadings under stipulation of the parties were presented for determination at the Special Term of the Supreme Court of the State of New York which Court granted judgment for the plaintiff as prayed for in the Complaint upon a construction of the statutes holding that said statutes were without legal force or effect as applied to the plaintiff, its division and branch associations and its members within the State of New York. Upon the appeal to the Appellate Division the judgment at Special Term was reversed and the Complaint of the plaintiff was directed to be dismissed. The Appellate Division construing Sections 41, 43 and 45 of the Civil Rights Law as to apply to the plaintiff, its division and branch associations and its members and holding that the statutes as thus construed were not repugnant to the due process and equality provisions of the Fourteenth Amendment and that said statutes did not invade or violate the postoffice, post-roads clause of Article I, Section 8, Subdivision 7 of the United States Constitution granting exclusive power to the Federal Government to establish postoffices and post-roads.

In the Court of Appeals the plaintiff's contention as to the construction of the statutes was rejected, such Court holding that Sections 41, 43 and 45 of the Civil Rights Law were applicable to the plaintiff, its division and branch associations and its members, the Court declining to apply the

in pari materia principle of construction to Sections 41, 43 and 45 of the Civil Rights Law and Subdivision 5 of Section 701 and Section 715 of the Labor Law which the plaintiff had contended were related statutes and should be construed as dependent parts of a unitary plan dealing with related subjects of labor relations. In this way the Court decided that the exemptions of employees in the public service of the State or its subdivisions did not exempt them from the application of Sections 41, 43 and 45 of the Civil Rights Law. The Court, however, did pass upon the constitutional questions presented by the plaintiff under the due process and equality clauses of the Fourteenth Amendment, and the postoffices and post-roads clause of Article I, Section 8, Subdivision 7 of the Constitution of the United States in which exclusive power is granted to the Federal Government to establish postoffices and post-roads, holding adversely to plaintiff's contentions.

The Stipulation.

The parties entered into a stipulation that the issues arising from the pleadings be submitted to the Special Term of the Supreme Court held at the City of Albany, New York, on the 24th of September, 1943, as though upon a motion by the plaintiff for summary judgment as prayed in the Complaint, and upon a cross-motion by defendants that the Complaint be dismissed (R. 11-14). This Stipulation was entered into for the convenience of the court and counsel. Such of this written data as was competent and relevant might be submitted and considered by the courts. This, of course, did not contemplate that the whole field of literature on the topic of labor organizations or the observations of writers and commentators on the scope and effect of plaintiff's charter and its legal status

as a corporate entity, was to be regarded as having any evidentiary value (R. 13).

The important factors of the appellant's status are its legal existence and the purposes for which it was formed. The fundamental purpose is to establish a fraternal beneficiary society for the sole benefit of its members and their beneficiaries, and other purposes of a social character to provide closer social relationship among Railway Mail Clerks to enable them to perfect any movement that may be for their benefit as a class or for the benefit of the Railway Mail Service.

The intimacy among the members arising out of such closer social relationship would be calculated more readily to attract them as a unit in any movement designed for their benefit as a class. Any benefit resulting from such movement would enure to the advantage of all Railway Mail Clerks regardless of their membership in the appellant.

Exhibits.

Among the exhibits submitted to the Courts below was a photostatic copy of the Certificate of Affiliation issued to the appellant by the American Federation of Labor. The form of the certificate is prepared by the American Federation of Labor and the word "union" appears in the printed context. The significance of the word "union" lies in the fact that by its use the body represented by it has declared a purpose to affiliate in a federation constituted under the American Federation of Labor.

Among the objects of the A. F. of L. are the encouragement and formation of local trade and labor unions and closer federation of such societies to secure legislation in

the interest of the working masses, the establishment of national and international trade unions based upon the strict recognition of the autonomy of each trade, and the promotion and advancement of such bodies, and an American federation of all national and international trade unions to aid and assist each other * * * to secure legislation in the interest of the working people, and influence public opinion by peaceful and legal methods in favor of organized labor."

At a convention of representatives of its membership held in Cleveland, Ohio, in June, 1917, a resolution was adopted to submit by vote on referendum to its entire membership the question of whether it should affiliate with the American Federation of Labor, an unincorporated association, reserving the form and identity of the appellant as a corporation. By a majority the membership voted in favor of such affiliation and in December, 1917, a Certificate of Affiliation was granted by the A. F. of L. to the members of the Executive Committee of the appellant "to constitute the union herein named and known under the title of Railway Mail Association for the purpose of a thorough organization of the trade, and a more perfect Federation of all TRADES and LABOR UNIONS. And the Union being duly formed, is empowered and authorized to initiate into its membership any person or persons in accordance with its own laws. And to conduct the business of said union in compliance with the best interests of the trade and labor in general. The autonomy of the Union is hereby ordained and secured."

> "PROVIDED, That the said Union do conform to the Constitution, Laws, Rules and Regulations of the AMERICAN FEDERATION OF LABOR, and in default thereof, or any part, this Certificate of Affiliation may be suspended or revoked according to the laws of this FEDERATION. And should the said RAIL-

WAY MAIL ASSOCIATION be dissolved, suspended or forfeit this Certificate of Affiliation, then the persons to whom this Certificate of Affiliation is granted, or their successors, bind themselves to surrender the same with such other property as shall properly belong to this FEDERATION. And further, in consideration of the due performance of the above, the

AMERICAN FEDERATION OF LABOR

does hereby bind itself to support the said RAILWAY MAIL ASSOCIATION in the exercise of all its rights, privileges and autonomy as an affiliated Union."

Ample provision was thus made by the appellant to preserve its corporate existence and to reserve to itself its corporate purposes and their right to supremacy and with complete autonomy.

Indeed, less could not be reserved within the principle of *Ultra Vires*. The appellant is a Corporate Entity. It is given legal rights by law and yet within those rights there are limits. The appellant could not subordinate its legal existence or identity to affiliate with the A. F. of L., an unincorporated association. But the appellant did not do this. It reserved its form and identity in the votes of its membership which approved the proposal to affiliate. Even the membership could not transcend the corporate powers of the appellant.

It was not within the power of the appellant to subordinate its corporate faculties to the A. F. of L. through the act of appellant's membership in authorizing such affiliation.

In 19 Corpus Juris Secundum, Secs. 965-980, discussing the meaning of the term "*ultra vires*", it is stated:

"Strictly speaking, an *ultra vires* act is one outside the scope of the powers conferred by the legislature,

and although the term has been used indiscriminately, it is properly distinguishable from acts which are illegal, in excess or abuse of power, or executed in an unauthorized manner, or acts within corporate powers but outside the authority of particular officers or agents."

Ultra vires and illegality distinguished. Although, as appears above, the phrase "*ultra vires*" has been used to designate, not only transactions beyond the express and implied powers of the corporation, but also transactions which are contrary to public policy or contrary to some statute expressly prohibiting them, the terms "*ultra vires*" and "illegality" represent ideas which are totally distinct and altogether different. A corporate transaction may be illegal in the true and proper sense, or it may be *ultra vires* without being illegal. According to the weight of authority, when corporate acts are spoken of as *ultra vires*, it is not intended that they are illegal, but merely that they are not within the powers conferred on the corporation by the act of its creation.

Distinction is to be made between act of corporation which is merely without authority, and one which is illegal. In the one case, it is a question of authority; in the other, of legality. If it be granted that the acts complained of are *ultra vires*, still they were not in violation of express statute; they were not *mala in se* or *mala prohibita*, or against public policy.

What, therefore, was the purpose of the Executive Committee with the approval of a majority of the membership in accepting the Certificate of Affiliation? It is clear that the A. F. of L., the spokesman for the labor movement which had extended its efforts on behalf of workers

generally without regard to membership in organized labor, was an influential factor in molding public opinion, and exerted strong power in influencing beneficial legislation both in the Congress and in the Legislatures of the States for the improvement of labor standards. This was so not only in private enterprise but even in public service. Doubtless, in modern progress the law-making bodies even if left to themselves would recognize the need for providing standards in keeping with the march of time, but whether they would or not, the exertion of the A. F. of L. did remind them of the necessity and of the justness which modern legislation reflected. The leaders of capital always aware of their self-interests were not without powerful lobbies to oppose any legislation which might improve the condition of the working class at some cost to the employers.

For the privilege of the affiliation the plaintiff paid its *quid pro quo* in the form of modest *per capita* dues on its membership so that the relationship established by the affiliation was one of merely paying for a beneficial service which the A. F. of L. could render. In other words, the A. F. of L. was a representative of the plaintiff in the halls and committee-rooms of the Congress.

While the employment of the Railway Mail Clerks is political in the sense that those who serve, serve only their government, there is nevertheless a background of economy, for in order to serve one must live, and living must rest secure upon an adequate requital for the service rendered. It was through the failure of those in charge of administrative fields to recognize the justice of modern standards of living for the worker in public service and their opposition to the efforts of such worker to present his cause to the departments, or the Congress, that neces-

sity arose for the public employee to turn to such help as he might get to arouse public opinion in his behalf in support of just legislation.

Assignment of Errors.

The Court of Appeals erred:

1. In holding that said Section 43 of said Civil Rights Law of the State of New York as applied to the appellant, its division and branch associations and members was not repugnant to the provisions of Article I, Section 8, Subdivision 7, of the Constitution of the United States granting to the Congress of the United States the exclusive power for the enactment of legislation in establishing postoffices and post-roads; and in denying and overruling the appellant's contention that the postoffice and post-roads clause aforesaid and the laws enacted by Congress pursuant thereto were exclusive.

2. In holding that the appellant and its division and branch associations and members within the State of New York whose membership is drawn from the classified service of the Federal Government in the Railway Mail Department of the Post Office Department of the United States are subject to the provisions of Sections 43 and 45 of the Civil Rights Law of the State of New York.

3. In holding that said Sections 43 and 45 of said Civil Rights Law as applied to the appellant and its members was not an attempt to regulate an instrumentality of the Federal Postal System.

4. In holding that said Sections 43 and 45 of the said Civil Rights Law as applied to the appellant, its division

and branch associations and its members within the State of New York had no relation to the postoffice and post-roads clause of the Constitution of the United States.

5. In holding that the provisions of Sections 41, 43 and 45 of the Civil Rights Law were not repugnant to the due process guarantee of the Fourteenth Amendment to the Constitution of the United States.

6. In holding that said sections of the Civil Rights Law did not constitute an arbitrary, unlawful and unreasonable abridgment of the property rights of the appellant and its division and branch associations and of their liberty of contract, and did not deprive them of their property within the State of New York in violation of the due process clause of the said Fourteenth Amendment to the Constitution of the United States.

7. In holding that the said provisions of the Civil Rights Law as applied to the appellant, its division and branch associations and members, did not create arbitrary, capricious and unreasonable regulations contrary to the due process clause of the Fourteenth Amendment to the Constitution of the United States, and did not create arbitrary, capricious, and unreasonable and discriminatory classifications contrary to the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

8. In holding that the provisions of said Civil Rights Law did not deprive the appellant of its property without due process of law under the Fourteenth Amendment aforesaid.

9. In affirming the judgment entered in the Supreme Court of the State of New York upon the order of the Appellate Division of the Third Judicial Department of said State which dismissed the complaint of the plaintiff in this action.

Summary of Argument.

1. As applied to the appellant, its division and branch associations and its members, Section 43 and the related Sections 41 and 45 of the Civil Rights Law of the State of New York are invalid as offending the due process clause of the Fourteenth Amendment to the Constitution of the United States because such laws constitute an arbitrary, unreasonable and capricious regulation of the right of selection to membership and an abridgment of the property rights and the right to liberty of contract of the appellant, its division and branch associations and members.

2. These sections are an invasion of and are in contravention to Article I, Section 8, Subdivision 7, of the Constitution of the United States.

3. The procedure in this case for declaratory judgment with prayer for injunctive relief presents a "case" or "controversy" within the meaning of the judiciary article of the United States Constitution (Article III, Sections 1 and 2).

POINT I.

As applied to the appellant, its division and branch associations and its members, Section 43 and the related Sections 41 and 45 of the Civil Rights Law of the State of New York are invalid as offending the due process clause of the Fourteenth Amendment to the Constitution of the United States because such laws constitute an arbitrary, unreasonable and capricious regulation of the right of selection to membership and an abridgment of the property rights and the right to liberty of contract of the appellant, its division and branch associations and members.

Coppage v. Kansas, 236 U. S. 1.
Wolff Packing Co. v. Ct. of Ind. Relations, 262 U. S. 522.
Same v. Same, 267 U. S. 552.
Nebbia v. New York, 291 U. S. 502.
Olsen v. Nebraska, 313 U. S. 236.
Buchanan v. Warley, 245 U. S. 60.
Southern Railway Co. v. Virginia, 290 U. S. 190.

1. The appellant is a membership corporation. Its membership is drawn from regular male Railway Postal Clerks or male substitute Railway Postal Clerks of the United States Railway Mail Service. Membership is limited to such clerks who are of the Caucasian race or are native American Indians. The appellant is created and organized under the laws of the State of New Hampshire. It is not a creation of New York State's laws. In doing business within the State of New York it is subject to the latter's laws insofar as such laws are not offensive to or do not constitute an invasion of the provisions of the Federal Constitution.

As applied to the appellant, its division and branch associations and members within the State of New York, Sections 41, 43 and 45 of the Civil Rights Law offend the due process provisions of the Fourteenth Amendment to the Constitution of the United States.

As applied to the appellant these sections of the Civil Rights Law impose an arbitrary and unreasonable regulation upon

(a) the right of the appellant to conduct its business within the State of New York;
(b) the ownership and management of its property;
(c) its liberty of contract;
(d) its right to the selection of membership;
(e) the social rights of its members;
(f) the property rights of its members.

The above enumeration comprises legal rights which belong to the appellant, its division and branch associations and members. It has, and its division and branch associations and members have, a personal and individual interest in such rights and the appellant in its own right, and in the representative rights of its division and branch associations and members as a class, has a standing in this Court to present the constitutional questions involved in this litigation. It personifies the inherent rights of its members to express and exercise their social rights, and in making preference on the social side in the selection of its members, it is doing no evil and is not adversely affecting the economic status nor the economic rights of any regular or substitute male Railway Postal Clerk.

The appellant being a membership corporation speaks in its own right and the collective rights of its membership who are all in one and the same class and whose legal rights are adversely affected by the State statutes in question.

In Voeller v. Neilston Warehouse Co., 311 U. S. 531; 61 S. Ct. 376, this Court has said through Mr. Justice Black:

> "The constitutional issue is here raised for the majority shareholders by the corporation, which admittedly itself had notice. Exercising the very delicate responsibility of passing upon the validity of state statutes, this Court has many times declared the rule that only those who have been injured as the result of the denial of constitutional rights can invoke our jurisdiction on constitutional questions. Yet here the corporation would have us say that it is sufficiently the representative of the majority to raise in their behalf the constitutional issue, but not sufficiently their representative to receive notice. We hold that, so far as the constitutional requirement of due process is concerned, it is in this case sufficiently their representative for both purposes, and accordingly we find it necessary to reverse the judgment below.
>
> "There is nothing unusual in such a holding; the rights of parties are habitually protected in court by those who act in a representative capacity; an executor or administrator may act for the beneficiaries of an estate; a receiver may represent the collective interests of stockholders, partners, or creditors; a lawyer may appear for his clients; and a corporation may represent the collective interests of its shareholders. In this case, in fact, the unappealed ruling of the trial judge on the attempted intervention by the majority stands as an adjudication that in those respects here material the majority had committed their interests to the corporation itself."

See also:

Southern Railway Co. v. King, 227 U. S. 524.
Standard Stock Food Co. v. Wright, 225 U. S. 540.
Moffat Tunnell League v. United States, 289 U. S. 113.

There is a difference between social and economic rights. Social rights of the character involved in this case, emanating as they do from the natural rights of the individual,

carrying no evil, and conveying no legal injury to another in a state of society, are not subject to regulation under the police powers of the State. There will always be discriminations. We discriminate in the method of our religious worship. We discriminate in the choice of our friends. We differ in our tastes and likes, and yet nothing can be done about this for it is beyond regulation in the absence of a binding grant from us to our form of government.

To apply these Civil Rights sections to the appellant or to its division and branch associations or members would constitute an arbitrary and unreasonable regulation. It would be unreasonable to deprive the appellant or its members of the right to make selection in choosing members. Such choice does not constitute a discrimination which is unfair or unjust because it works no economic injury to any Railway Postal Clerk who is not a member of the appellant Association. The appellant has nothing to do in influencing the appointment or promotion in positions in the postal system where the rights appertaining thereto are fixed by the Civil Service Laws of the Federal Government. Any effort exerted by the appellant to advance the interests and welfare of the Railway Postal Clerks, if successful, redounds to the benefit of every Railway Postal Clerk in the same category whether he is a member of the appellant's Association or not. Consequently, the rights of no Railway Postal Clerk are adversely affected or limited and it is an unreasonable intervention of the State under the circumstances of this cause to apply the State law to the appellant or its officers and members, and is offensive to the due process clause of the Fourteenth Amendment. It amounts to a deprivation of the property rights of the appellant and places an unreasonable limitation upon the ownership and management of its property and its right to the liberty of contract.

The benefit fund which is created from contributions made by beneficiary members and accumulated for their benefit and protection is a property right belonging to the appellant which would be limited or destroyed by the enforcement of the Civil Rights Law here in question against it or its members.

In the *Nebbia* case arising out of a price-fixing statute of the State of New York the Act was challenged as being arbitrary and unreasonable under the due process clause of the Fourteenth Amendment. In the majority opinion a long line of previous cases in this Court was set forth where the legislation under review was sustained under the police powers against the challenge of the due process clause of the Fourteenth Amendment; and in the opinion read for the minority members of this Court a similar long line of previous cases in this Court was likewise set forth in which this Court had struck down state legislation as being arbitrary and unreasonable. In the majority opinion, page 536, Mr. Justice Roberts says:

> "It is clear that there is no closed class or category of businesses affected with a public interest and the function of Courts in the application of the Fifth and Fourteenth Amendments is to determine in each case whether circumstances vindicate the challenged regulation as a reasonable exertion of governmental authority or condemn it as arbitrary or discriminatory."

And at page 539, he continues:

> "The Constitution does not secure to anyone liberty to conduct his business in such fashion as to inflict injury upon the public at large, or upon any substantial group of the people. Price control like any other form of regulation is unconstitutional only if arbitrary, discriminatory or demonstrably irrelevant to the policy the legislature is free to adopt and hence an unnecessary and unwarranted interference with individual liberty.

> "Tested by these considerations we find no basis in the due process clause of the Fourteenth Amendment for condemning the provisions of the Agricultural and Markets Law here drawn into question."

It is respectfully submitted that the business of the appellant as it is conducted inflicts no injury upon the public at large or upon any substantial group of the people or in any way affects adversely the economic status of any regular or substitute Railway Mail Clerk or of any member of the public. The case at bar is not a tax case, nor a price-fixing case, nor a labor relations case, nor a wage and hour case, nor is the business of the appellant subject to any license regulation. The appellant derives no benefit, economic or otherwise, under the labor relations provisions of New York State's Labor Law and to apply Sections 41, 43 and 45 of the Civil Rights Law to the appellant's organization or to its free choice in the selection of its members clearly constitutes an arbitrary and unreasonable regulation of its business and is an arbitrary and unreasonable interference with the property rights and the liberty of contract guaranteed by the due process clause of the Fourteenth Amendment to the appellant, its division and branch associations and members.

The question of discrimination when applied to the case at bar is a sociological matter which, in the absence of a constitutional grant from the people to the government, cannot be regulated under the State Police Powers. Such discrimination is not unjust. It is a preference causing no injustice to anyone.

It concerns a social relationship which must rest on voluntary action. The law cannot coerce its performance. We are all left free to choose. This is a personal and constitu-

tional right beyond the power of legislation. The choice is inherent in the person. Tolerance may broaden the choice and benevolence may soften to the point of common acceptance. Education and the spirit of Christianity may efface the thought of social differences. Coercive legislation is not the remedy.

In the Seventy-eighth Congress, Anti-Discrimination Bills were introduced both in the Senate and in the House of Representatives. They were designed to operate in the Federal field and in the government agencies where under the powers given to Congress such legislation might be enacted if constitutional. In the public hearings held before the House Committee on Labor, witness after witness from various fields of economics, labor relations, social workers, sociologists, and churchmen, indicating their approval of the contemplated legislation, made the distinction between social rights and economic rights, the latter being termed the right to live and to have the opportunity to work which would be accomplished by the enactment of the proposed legislation involving a procedure for the taking away from any employer in the field of industry in interstate commerce the right to refuse employment because of race, creed, color, national origin or ancestry, and would deny to the government agencies the privilege of making similar discrimination. (Report of Hearings before the Committee on Labor, House of Representatives, June 1-6, 1944.)

Section 43 of the Civil Rights Act came after considerable travail. It was the conception of the New York State Temporary Commission on the Condition of the Urban Colored Population in an effort to bar discrimination against the colored race in their right *to enjoy equal opportunity under the law.* The deprivation to the Negro of

his right to equal opportunity had developed into a serious economic problem. Unemployment and inadequate wage were the core of the matter. Employment and the right to work were the only alleviates. Consequently, to discriminate against the individual because of his color not only denied to him the right of equal opportunity but brought about economic results sizable enough to affect general welfare. This was the condition to cure which the Temporary Commission was seeking light and inspiration. (Italics ours.)

In its first report to the Legislature in 1938 (New York State Legislative Document No. 63, 1938) at page 24, the Commission stated:

> "Negroes frequently suffer in trade union employment through the job-filling policies established through the unions of which they are members. * * * A union of motion picture operators in New York City refused admission to Negro motion picture operators for many years, finally admitting them on an 'auxiliary basis' and restricting their employment, even today, to the Harlem area. Even in this area, it is charged that the jobs in the best paying theatres are reserved for whites.
>
> "It is with these considerations in mind that the Commission has recommended legislation designed in some measure to protect workers of minority groups from unfair discrimination by labor unions. The policy of our law, as developed both by the courts and the legislature of this State, regards a labor organization as a beneficent co-operative association of workmen *to unite their bargaining power for a contest with capital.* When, however, such an organization, having or seeking a closed shop, *i. e.*, a monopoly of employment in the particular craft or plant unit, deliberately practices racial discrimination it becomes an engine of oppression far more powerful than any combination of capital." (Italics ours.)

The top recommendation made by the Commission was a proposal for an amendment of the Labor Relations Act to

exclude from the protection thereof such unions as wished to bargain only for certain racial or religious groups of workers while denying other groups the privilege of membership or the opportunity for employment.

This recommendation was not enacted into law and in the second report of the Commission submitted in 1939 the proposed amendment in the identical language was again the top recommendation. At this session of the Legislature the bill accepting the recommendation of the committee was passed by both houses and vetoed by the Governor. The Governor's Memorandum in part follows:

> "The purpose of the bill cannot be too highly commended. * * * Well grounded fears have been expressed by many that this bill, if approved, would go far toward destroying the essential rights of organized labor."

While the bill was again introduced to the 1940 Session it died in Labor Committee but with a slight change in text it was presented as an amendment to the Civil Rights Law and thereupon promptly passed and signed by the Governor with an accompanying Memorandum in which he wrote:

> "This bill carries out one of the principal recommendations made in my Annual Message to the Legislature. The purpose of the bill cannot be too highly commended. Organized labor is recognized by all as a most significant part of our industrial society. This fact finds recognition in the enlightened laws recently written on the statute books of state and nation. But with greater rights come greater responsibilities. The rights which government has accorded to organized labor must not be used as instruments of oppression. They must be extended equally to all workers. Distinctions based on race, creed or color cannot be tolerated. Such practices can only result in bringing organized labor rapidly into justified ill repute. It must see itself as others see it, as an integral part of our democratic society. It will not long retain that

status by indulging in undemocratic habits of discrimination. This bill, I am certain, will aid greatly in eliminating the vicious practice of discrimination. This bill is approved."

In the recent cases of Steele v. Louisville & N. R. Co., 65 S. Ct. Rep. 226, and Tunstall v. Brotherhood of Locomotive Firemen and Enginemen, 65 S. Ct. Rep. 235, decided by this Court on December 18, 1944, stress was laid upon the fact that the economic rights of the negroes who were discriminated against by the unions involved, Mr. Chief Justice Stone in the course of his opinion saying "The minority would be left with no means of protecting their interests, or indeed their right to earn a livelihood by pursuing the occupation in which they were employed". The concurring opinion of Mr. Justice Murphy indicates that the legal question he was discussing rested upon economic discrimination which in the circumstances of the cases constituted unjust discrimination and in effect violated the constitutional rights of the individuals discriminated against.

POINT II.

Section 43 and the related Sections 41 and 45 of the Civil Rights Law of the State of New York as applied to appellant, its division and branch associations and its members, constitute an invasion of and are in contravention to Article I, Section 8, Subdivision 7, of the Constitution of the United States.

Civil Rights Cases, 109 U. S. 18.
Re Debs, 158 U. S. 564.
Gilbert v. Minnesota, 254 U. S. 341.
Gillespie v. Oklahoma, 257 U. S. 505.
Hall v. DeCuir, 95 U. S. 485.

Illinois Central R. R. Co. v. Illinois, 163 U. S. 142.
Indian Motorcycle v. United States, 283 U. S. 575.
Re Jackson, 96 U. S. 727.
Johnson v. Maryland, 254 U. S. 51.
Prigg v. Pennsylvania, 16 Peters 539.
Re Rapier, 143 U. S. 110.
Postal Service Act, Dec. 21 1893, Code Title 39 U. S. C. A.
Code Title 5 U. S. C. A., chapter 12 session 652.

The postal system belongs to the Federal Government . . . Railway Postal Clerks are instrumentalities of the postal system more so perhaps than any other of its branches for the reason that they are handling and assorting the mail while it is being transported over the rail post routes of the country, requiring them to work at varying hours of the day so as to render continuous service in the dispatch of mail matter. They are in the classified service of the Federal Government and their appointments and promotions are controlled by Civil Service Laws which give them protection and security. They are not beholden to the procedure of collective bargaining. They are or should be the wards of Congress to which they must turn for the accommodation of their petitions and grievances.

The appellant's membership is made up of a part of those who serve the government in the Railway Mail Service. All in such Service are not members. Eligibility to membership primarily grows out of the fact that the applicant is engaged in the work of carrying on a governmental function in the Railway Mail Service. Membership, therefore, arises out of a class of government workers. It is true that the organization of the appellant is a private one but its activities spring from the fact that the members are government Railway Postal Clerks who are instrumentalities for the carrying on of the postal system. The

government has recognized their right to organize and has set limits on their organizational activities. This shows that the Federal Government displays concern as to these activities. The postoffice clause is stronger than the interstate commerce clause. The latter regulates interstate commerce and gives priority to the government to make the regulation but until the government acts to make the regulation the States within their borders may under their police powers pass local legislation if it does not directly affect or burden interstate commerce. The postoffice clause is of a different quality. It is a direct affirmative grant by the people to the central government to establish postoffices and post-roads. This grant is exclusive and all the power to carry it into effect resides in the Federal Government. In this field the States have no right to enter. The activities of the Railway Postal Clerks in organizing as such are related to their service in the postal system and so become the concern of the Federal Government under the postoffice clause.

In the Adair case, 208 U. S. 161, this Court back in 1928 held that the question of labor union membership of an employee of a railroad engaged in interstate commerce had no relation to interstate commerce and that an act of Congress making it a criminal offense for the representative of an employer to discharge the servant on account of his membership in a labor union was unconstitutional under the Fifth Amendment as offensive to the due process clause.

This Court more recently has said in dealing with cases arising under the National Labor Relations Act that membership in labor organizations could be made the concern of the National Government under the power given to regulate interstate commerce and that the Adair case and the

case of Coppage v. Kansas, 236 U. S. 1, have been completely sapped of their authority by the more recent cases.

Phelps Dodge Corp. v. National Labor Relations, Board, 313 U. S. 187.

The cause at bar deals with the situation in which the Railway Postal Clerk works for and carries out the function of the government in conducting the postal system. Here the contact is immediate and direct and the present status or weight of the determination in the Adair case or the Coppage case is of no material moment because the situation here is more direct with the government's right to regulate under the postoffice clause than in the Adair case under the interstate commerce clause. As was said by Mr. Chief Justice Hughes in National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U. S. 1, speaking of the National Labor Relations Act at page 31, "It purports to reach only what may be construed as contemplating the exercise of control within constitutional bounds. It is a familiar principle that acts which directly burden or obstruct interstate or foreign commerce, or its free flow, are within the reach of Congressional power. Acts having that effect are not rendered immune because they grow out of labor disputes (citing cases). It is the effect upon commerce, not the source of the injury which is the criterion."

We do not contend that the appellant is a governmental agency or instrumentality. Its membership is drawn from male Railway Postal Clerks who are in the classified civil service of the United States. Primarily, they are associated because their employment is in carrying on a function of the Federal Government. As Railway Postal Clerk they organize, and their common occupation identifies them and indicates their purpose to enable them to perfect any movement that may be for their benefit as a class or for the

benefit of the Railway Mail Service. Their conduct as it may affect them is related to their employment in this governmental service, and if such conduct is to be made the subject of regulations, such regulations must issue from the Federal Government. This is the spirit and the venture of Section 652 of the Classified Civil Service Code Title 5 which tells them in substance that they may group in associations but if they affiliate with an outside organization which imposes an obligation or duty upon them to engage in any strike, or proposes to assist them in any strike against the United States, it will be sufficient cause for their removal from the classified civil service. This regulates their conduct as government employees and is within the unquestioned and exclusive power of the Federal Government. This is a regulation the State has not the power to make any more than the State of Maryland had the right to require the mail carrier to take out a license for the vehicle he used on the highways of Maryland to deliver the mail as decided in the Johnson case (*supra*).

The Postal Service Act, December 21, 1893, Code Title 39 U. S. C. A., creates the postal system in all its various branches and it was the design of Congress thereby to appropriate the entire field of the postal service and its regulation, and the Auxiliary Act of August 24, 1912, c. 389, Section 6, 37 Stat. 555, being Section 652 of Code Title 5 U. S. C. A., manifests a clear intent on the part of Congress to show its concern regarding membership in any society, association, club or other form of organization of postal employees. Congress having established and organized the postal system in all its branches and in varying detail has exercised the federal power granted to the general government under the Postoffice and Post-Roads clause. The Act of Congress of August 24, 1912, aforesaid,

is a regulation affecting the conduct of postal employees in relation to their service, and a recognition of their right to organize for the improvement of working conditions and for other benefits. The State Act, Sections 41, 43 and 45 of the Civil Rights Law, so far as employees of the postal system are concerned, cannot be tacked onto the regulations made by Congress, for the State is excluded from legislating in this field. The prohibition of State action rests "not upon any consideration of degree but on the entire absence of power on the part of the States to touch the instrumentalities of the United States" (Opinion of Justice Brandeis in Gilbert v. Minnesota, 254 U. S. 341, citing the Johnson case *supra*).

The exclusive character of the power given to Congress to establish postoffices and post-roads as Mr. Justice Fields said in the Jackson case "has been practically construed since the foundation of the government to authorize not merely the designation of the routes over which the mail shall be carried and the offices where the letters and other documents shall be received to be distributed or forwarded, but the carriage of the mail and all measures necessary to secure its safe and speedy transit, and the prompt delivery of its contents."

In the Debs case, Justice Brewer says:

> "What are the relations of the general government to interstate commerce and the transportation of the mails? They are those of direct supervision, control and management. While under the dual system which prevails with us the powers of government are distributed between the state and the nation, and while the latter is properly styled a government of enumerated powers, yet within the limits of such enumeration it has all the attributes of sovereignty, and, in the exercise of those enumerated powers, acts directly upon the citizen, and not through the intermediate agency of the state.
>
> "The government of the Union, then is, emphatically and truly, a government of the people. In form and in

substance it emanates from them. Its powers are granted by them, and are to be exercised directly on them, and for their benefit."

In the Civil Rights cases Justice Bradley after referring to the enumerated powers granted to the general government in the Federal Constitution says at page 18:

"In these cases Congress has power to pass laws for regulating subjects specified in every detail and the conduct and transactions of individuals in respect thereof."

In re Rapier, one of the lottery cases which involved a construction of an act of Congress in excluding from the mails lottery matter, the Court says:

"That power may be abused, furnishes no ground for denial of its existence if the government is to be maintained at all; it must be left to Congress in the exercise of a sound discretion to determine in what manner it will exercise a power which it possesses.

"When the power to establish postoffices and post-roads was surrendered to the Congress it was as a complete power, and the grant carried with it the right to exercise all the powers which made that power effective. It is not necessary that Congress should have the power to deal with crime or immorality within the States in order to maintain that it possesses the power to forbid the use of the mails in aid of the perpetration of crime or immorality."

In Hall v. DeCuir, Justice Clifford in the course of his opinion said:

"If Congress have a constitutional power to regulate a particular subject, and they do actually regulate it in a given manner and in a certain form, it cannot be that the State Legislatures have a right to interfere, and, as it were, by way of complement to the legislation of Congress, to prescribe additional regulations and what they may deem auxiliary provisions for the same purpose. The Chusan, 2 Story, 466; Sinnot v. Davenport, 22 How. 227, 16 L. Ed. 243.

"In such a case, the legislation of Congress in what it does prescribe manifestly indicates that it does not

intend that there shall be any further legislation to act upon the subject-matter. Its silence as to what it does not do is as expressive of what its intention is as the direct provisions made by it. Prigg v. Com. of Pa., 16 Pet. 539; Gibbons v. Ogden *(supra)*; Bk. v. Smith *(supra)*."

In New York Central R. R. Co. v. Winfield, 244 U. S. 147, where the New York State Workmen's Compensation Law as applied to interstate commerce was rejected, as in conflict with the Federal Employer's Liability Act, the above text is repeated.

The opinion in the Court of Appeals makes it plain that the Court was thinking of the appellant and its members as government servants engaged in a federal activity and was passing upon the relationship of the Railway Postal Clerk in his occupation as such to the government. It was not as to the citizen generally that the State Act, Section 43, was making the attempted regulation. It was, as applied in this cause, an effort to regulate the business and affairs of the appellant and its officers and members who constituted part of the class of male Railway Postal Clerks.

This was the obvious tenor of the reasoning of the opinion. It was the labor organization and the officers and members thereof which were being regulated. In any litigation under Section 43, proof of a violation must consist of evidence which would establish in the first place that the party prosecuted was a labor organization, or an officer or member thereof.

The opinion of the learned Court concludes as follows:

"The statute so construed does not impinge upon the powers of the Federal Government to conduct the mail service. The United States Government has rec-

ognized the right of mail clerks to organize for collective action in the presentation of grievances though not for collective bargaining. A statute in general terms which prohibits all organizations within this State, including organizations of workers in government service, from discriminating on the ground of race, creed or color violates no public policy of the United States, does not interfere with or impede any government service and invades no field from which the State is excluded by the Constitution." (R. 39.)

It is not a question of policy but a question of power of the State to enter the field of the postal system. The State Act invades this field. That this is so is made abundantly clear by the Congressional reports on the anti-discrimination bills.

In the House report the scope of the bill introduced in the House is set forth on page 5:

"Sec. 4. Scope of act.—The bill seeks to invoke the fullest exercise of the powers of the Federal Government to forbid discriminatory employment practices. Thus it is applicable to employers engaged in interstate or foreign commerce or in the production of goods for commerce, to employers whether or not engaged in such commerce who contract with the Federal Government, and to the subcontractors of such prime contractors. The concept of interstate commerce and operations affecting it has been the subject of so much recent judicial interpretation, particularly under the National Labor Relations Act that we believe there should be no difficulty in determining the boundaries of Federal jurisdiction.

* * * * * *

"Finally the bill regulates the employment relations of every Federal agency, except that the procedure for judicial review of the administrative cease-and-desist orders provided for is not applicable. Instead the section provides that any Federal officer who violates an order of the Commission created by the bill (as distinguished from a violation of the unfair employment practice section) shall be removed from office. The Commission will presumably report to the

appropriate appointing officer or agency any violation of its orders by a subordinate official."

On the question of the constitutionality of the bill the following appears at page 7 of this report:

> "The right to work is the most fundamental of constitutional rights. H. R. 3986 is an affirmation of that right and an assurance of its meaningfulness, through the exercise of the plenary powers of Congress to regulate interstate commerce and legislate for the executive agencies."

As to the bill's application to labor unions the report states at page 9:

> "To the extent that the bill would affect the conduct of a union, the bill is no more violative of the due-process clause than in its effect upon the conduct of private business. It is no less reasonable a restraint in one case than in the other. Like an employer, a labor union can be forbidden to abuse its right by intruding upon the countervailing right of employment."

The report cites the case of Carroll v. Local 269, (N. J.) 31 Atl. 2d 233 and quotes therefrom as follows:

> "* * * Although a monopoly of labor opportunity is a permissible objective and realization of a union, unions obtaining such monopolies must be democratic and admit to membership all those reasonably qualified for their trade. * * * Otherwise such persons by the act of the union would be deprived of their constitutional right to earn a livelihood."

As to the bill's application to Federal agencies the report states at page 9:

> "The prohibitions in H. R. 3986 apply also to the agencies of the Federal Government and to Federal contracts. Again, the authority of Congress is clear. In both respects the bill represents a self-imposed restraint upon the Government. It is a restraint imposed as a matter of policy under its unrestricted power of Congress to lay down administrative guideposts for executive agencies (Constitution art. 1)."

"The Senate report makes the design of the bill to prohibit discrimination in all employment which is now subject to the control of the Federal Government. But no States can adequately control employment practices of Federal agencies or railroads or any other fields of employment that are constitutionally subject to exclusive Federal regulation. The responsibility of the Congress in this matter is inevitable."

The report says at page 7 that the proposed legislation affects:

> "(a) Government employment.—The congressional power, under article I, section 8, of the Federal Constitution, to regulate the employment practices of all Federal agencies is too clear to merit argument. It is the basis of all our civil-service laws and no challenge to this power has ever been successful in the courts. See United States v. Mitchell (89 F. 2, 805-809 (App. D. C.))."

Both the law-making bodies and the Courts have shown reluctance to regulate the activities of labor organizations or to place hindrances around the rights of the worker to organize for mutual aid and protection as against the coercion, interference or restraint of the employer. They have recognized these as inherent and natural rights and have immunized them as countervailing factors more equally to equip the worker with an approach to equality in the labor relations which grow out of private industry. They are rooted in the philosophy of collective bargaining and get their strength from modern jurisprudence which confirms these rights as justly entitled to the law's protection.

The situation which surrounds the worker in government service differs fundamentally. In this labor relation there is neither the philosophy nor the pronouncement of a recognized underlying conflict. The right to enter government service is open to all who possess the qualification or com-

petency to attain the classified service. Their rights are protected by law and they are secure in their appointments and promotions.

Among the exhibits on behalf of appellees are excerpts from statements made by officers or members of the appellant Association and officers and members of other postal organizations connected with the postal system of the United States before Committees of the Congress in relation to sundry bills pending in Congress dealing with the postal system generally and creating regulations and providing benefits and improvements in the various branches of the Post Office Department. These activities should persuade that the workers in the postal service turn to the Congress as the source of power to confer benefits under the postal system and to make regulations affecting the conduct of those serving therein.

A discussion of the dual character of our governmental structure and the separation of powers may be found in the case of Carter v. Carter Coal Co., 298 U. S. 294, and in Howard v. Illinois Central R. R. Co., 207 U. S. 463.

And as to the need of uniformity in the application of legislation having national scope or dealing with the instrumentalities of the Federal Government see United States v. Darby Corp., 312 U. S. 100; also Lyeth v. Hoey, 305 U. S. 194.

The uniformity factor is the essence of national legislation because it covers the whole area of the national domain. If New York may pass legislation regulating the conduct of Railway Postal Clerks within the State, any other State would be as free to make other or inconsistent regulations and the conduct of the Railway Postal Clerk in one State could be legal whereas in another State it might be illegal. Such situation must be left to a law national in scope and uniform in effect.

POINT III.

The procedure in this case for declaratory judgment with prayer for injunctive relief presents a "case" or "controversy" within the meaning of the judiciary article of the United States Constitution (Article III, Sections 1 and 2).

Aetna Life Ins. Co. v. Haworth, 300 U. S. 227.
Chamberlain Inc. v. Andrews, 271 N. Y. 1; affd. 299 U. S. 515; 301 U. S. 714.
Coffman v. Breeze Corp., 65 Sup. Ct. Rep. 298 (January 2, 1945).
Hoopeston Canning Co. v. Cullen, 318 U. S. 313.
Nashville, etc. Ry. Co. v. Wallace, 288 U. S. 249.
New Jersey v. Sargent, 269 U. S. 328.
New York Operators v. State Liquor Authority, 285 N. Y. 272.
Steele v. Louisville & Nashville R. R. Co., 65 Sup. Ct. Rep. 229.

The procedure in this case for declaratory judgment with prayer for injunctive relief was authorized under Section 473 of the Civil Practice Act of the State of New York, and the Rules of Civil Practice, Sections 210-214, and is a "case" or "controversy" within the meaning of the judiciary article of the United States Constitution (Const. Article III, Sections 1 and 2).

The cause now presented involves a typical and concrete "case" or "controversy". It is not moot nor collusive. It has arisen from a controversy as to the legal meaning, effect, application and constitutionality of the State herein in question.

The seeds of this litigation were planted when members of the local branch of appellant's organization in New

York City, having elected to membership in the Railway Mail Association contrary to its Constitution and By-Laws, sought the aid and intervention of the then Industrial Commissioner of the State of New York who, in turn, sought the advice of the then Attorney-General. The latter furnished to the Industrial Commissioner a legal opinion caustically critical of the Caucasian clause of the appellant's Constitution and of the policy followed by the appellant thereunder, holding that such clause was illegal and of no effect within the State of New York and that members of the local branch were legally right in ignoring it. Thereupon the Industrial Commissioner requested the appellant to advise her, for the completion of her official records on the matter, of the future policy of appellant's branch associations within the State of New York with reference to compliance with the Civil Rights and Labor Laws. To this request the appellant notified the Commissioner that the Civil Rights Law and the Labor Law do not apply to the appellant or its branch associations and if sought to be applied would constitute and be a violation of the Constitution of the United States and the Constitution of the State of New York and further notified the said Commissioner of its intention to bring action for a declaratory judgment of its rights and legal relations in the premises (R. 6-9).

This action was then brought. The issue involved was joined upon verified pleadings. The issue was tried on the evidence submitted in accordance with the stipulation. The underlying facts were not in dispute, the controversy arising upon the legality and application of the State laws in question. The issue proceeded to judgment and final determination. At the Trial Court injunctive relief as prayed was granted which upon appeal was reversed and the Complaint dismissed with costs.

The case is an actual case or controversy, where the issu is actual and adversary. It was not made the medium fo securing an advisory opinion in a controversy which had not arisen. The controversy was actual and earnest before the action was brought.

The appellant was asserting and insisting upon the lega right to conduct its business and affairs as it had done before the Civil Rights Amendments; that such laws did not apply to it and were the State of New York to enforce them against the appellant it would constitute a violation of the Federal Constitution. The Commissioner was asserting and insisting upon the claimed legal right to enforce the statutes in question, and this clash and conflict created a real controversy resulting in this case.

In the case of State of New Jersey v. Sargent, this Court, quoting from an earlier opinion, at page 333 says:

> "But no Court sits to determine questions of law *in thesi*. There must be a litigation upon actual transactions between real parties, growing out of a controversy affecting legal or equitable rights as to person or property. All questions of law arising in such cases are judicially determinable."

And again at page 334:

> "It is only where rights, in themselves appropriate subjects of judicial cognizance, are being, or are about to be, affected prejudicially by the application or enforcement of a statute that its validity may be called in question by a suitor and determined by an exertion of the judicial power."

In Conclusion, It is Respectfully Submitted that the Judgment Appealed from Should be Reversed, With Costs.

DANIEL J. DUGAN,
Counsel for Appellant.

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IN THE

Supreme Court of the United States

October Term, 1944.

No. 691.

RAILWAY MAIL ASSOCIATION,

Appellant,

against

EDWARD S. CORSI, as Industrial Commissioner of the State of New York, and NATHANIEL L. GOLDSTEIN, as Attorney-General of the State of New York,

Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW YORK.

APPELLANT'S REPLY BRIEF.

DANIEL J. DUGAN,
Counsel for Appellant.

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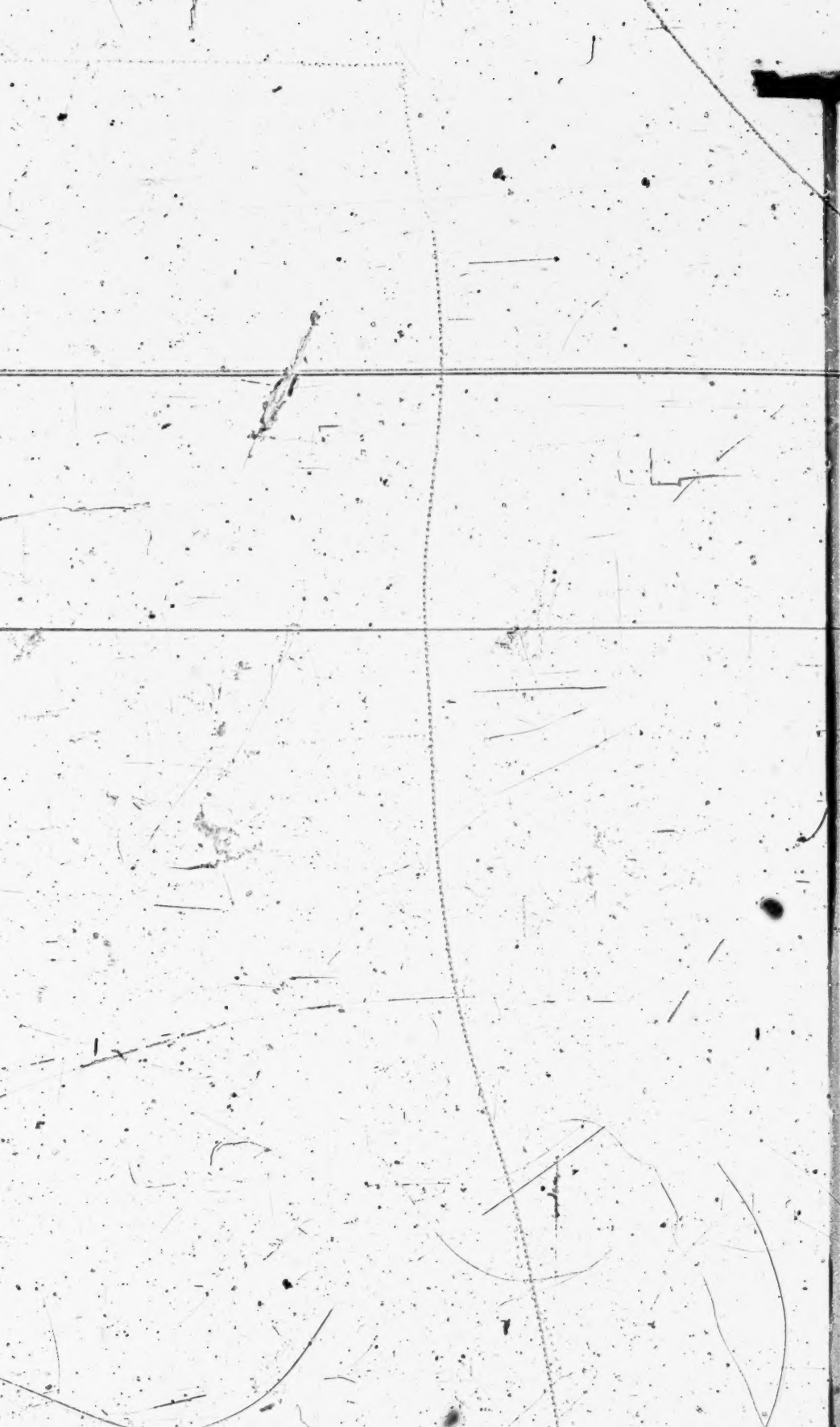
BATAVIA, N. Y.



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APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW YORK.

APPELLANT'S REPLY BRIEF.

I.

This reply brief is filed for the purpose of making comment on certain observations contained in the briefs filed in opposition and to call attention to errors in statements made therein.

In the brief for the appellees at page 12 the statement is made: "The fact that anti-discrimination legislation was pending in Congress in 1944, adverted to in the appellant's

brief for the purpose of quoting certain arguments made by *opponents* of the legislation, * * *". There was error in this. The reference is to page 33 of appellant's brief where the following statement is set forth: "In the public hearings held before the House Committee on Labor, witness after witness from various fields of economics, labor relations, social workers, sociologists, and churchmen, *indicating their approval* of the contemplated legislation, made the distinction between social rights and economic rights * * *."

The briefs in opposition lay stress on the statement that racial discrimination in employment in industry was a known evil because it deprived the one discriminated against of his right to equal opportunity under the law and affected his economic condition. The appellant has never raised any issue in this case upon that point and it is made abundantly clear in its briefs filed with this Court and in the State Courts.

The trend of the decisions in the Courts unmistakably indicates that such was the evil which legislation sought to eliminate. All that was decided in the New Negro Alliance case, 303 U. S. 552, was that the controversy there involved constituted a labor dispute and that the Federal Court was without jurisdiction to grant a temporary injunction under the Morris-LaGuardia Act.

In the case of Williams v. Quill, 277 N. Y. 1, cited by appellees on page 11 of their brief, the Court found no evil in a situation created by a collective bargaining contract between the employer and a labor union which provided that the employer would not employ any person in certain groups of workmen who is not or who does not

become, within one month after employment, a member of such labor union, the Court holding such agreement valid where there was nothing to indicate that any injury was sought or intended to present employees of such employer who were not union members. The appellant has no quarrel with the pronouncement attributed to the Court "that legislation might provide the remedy for abuses by labor organizations". The position of the appellant here is that there has not been any abuse of anyone by any act on its part.

Legislation of the character under review in this case possesses a public interest but the element of public interest cannot suffice to deprive the appellant of the right to conduct its business free from arbitrary, capricious and unreasonable legislative regulation or classification.

At page 13 of appellees' brief the contention is advanced that the appellant's position is rested upon a narrow view of the Association's activities and their effectiveness in achieving better employment conditions and the argument is made that "the mere facts that the Association has not yet attained a power over the individual employee comparable with that wielded by some other labor organizations, and that the nature of civil service employment offers a restraint to the attainment of such power are not sufficient". In reply it may be said that if our government is to continue to be governed by law and not by men there will not be given by future legislation any power to the appellant over the individual government employee comparable with that wielded by labor organizations in the field of industry. Civil service employment affords a full guarantee that such power can never be attained by appellant.

Kindred argument is presented in the *amicus curiae* brief of the National Association for the Advancement of Colored People. All the trials and tribulations of labor contentions, strife, conflict and strikes in the field of industry for nearly a century past have been referred to as creating the basis of evil discrimination in the right of the individual because of his color to seek employment in order that he might live, marry and raise a family, acquire property and enjoy equal privileges of public education to advance his offspring to higher culture and to decent physical comfort. The briefs are impressively silent in the revelation of any conflict, strife or strike within the ranks of the Railway Postal Clerks over security and advancement in their governmental positions. As a matter of fact there have been none, and none at all by reason of any attempt on the part of the appellant to frustrate the Federal Civil Service Law.

This brief at pages 16 and 17 quotes from an article entitled "The Black Worker" by Spero and Harris, and in justification of its act says: "Moreover, it is stipulated in the record that any appellate court may consider as exhibits offered by defendants". For the purpose of keeping the record straight it should be noted that this article was not stipulated to be competent evidence but that plaintiff had reserved the right to object thereto. (R. 13.)

There is nothing in the record to show that the appellant had any knowledge of or approved the action taken by the Illinois Branch Association nor that such action of the branch association had any influence with the appointing power which resulted to the detriment of the appointee. It is straining such circumstance out of all proper meaning to give support to the emotional contention that legal

injury has thereby come to any Railway Postal Clerk in his occupation.

In the brief of the American Civil Liberties Union on page 6 the statement is made: "Under the constitution of the plaintiff *aliens* but not negroes are eligible to membership, but the Federal Government is free to do the opposite—to discriminate against aliens and to employ negroes". It is not true that aliens are eligible to membership because an alien cannot enter the classified civil service and those who enter into membership in appellant's organization must be regular or substitute male Railway Postal Clerks whose citizenship is implicit in the classification. The insinuation intended by this passage consequently has nothing to support it.

The *amici curiae* briefs continue the argument as to the labor organization as an institution in the field of industry possessing the power of control by the exercise of economic pressure over the individual not affiliated with the labor movement. They ignore the distinction vital in the case at bar between the economic and the social condition. The manifestly unreasonable economic attitude displayed by the labor organizations in the cases cited and relied on growing out of the strife for economic rights in the industrial field of labor relations furnish neither precedent nor authority for the correct decision in the case at bar.

Section 43 although made part of the Civil Rights Law is neither a definition nor a declaration of civil rights. The section prohibits labor organizations from denying membership because of race, color or creed. The consequences of a violation were liability to criminal prosecution and to

a civil action to recover a penalty. The omission to confer such civil right has been recognized in new and impending legislation. The so-called Anti-racial Act, chapter 118, the Laws of 1945, effective July 1, Section 126, is as follows: "Opportunity for employment without discrimination a civil right. The opportunity to obtain employment without discrimination because of race, creed, color or national origin is hereby recognized as and declared to be a civil right". While the Fair Employment Practice Act now pending in the Congress by Section 4, declares that the right to work free from discrimination is an "immunity" of the citizens of the United States, which shall not be abridged by any Federal or State agency. (H. R. 2232. Report No. 187 from the Committee on Labor.)

When the act which constituted Section 43 was approved by the Governor no reference was made in his accompanying memorandum to Section 11 of Article 1 of the Constitution of the State of New York adopted in 1938 providing among other things that no person shall, because of race, color, creed or religion, be subjected to any discrimination in his *civil* rights.

It is the natural right of every person to seek employment but it is not the natural right of everyone to seek membership in appellant's organization. The State may declare or define civil rights to include privileges or opportunities which arise out of natural rights. When the State extends civil rights which impinge upon the natural or civil rights of others, the acts constituting the extension are strictly construed. (Burks v. Bosso, 180 N. Y. 341.)

While no reference was made in the Governor's Memorandum to the new clause in the State Constitution, direct

reference was made to the Labor Relations Acts "recently written on the statute books of State and Nation". It was the strife in labor relations arising out of the industrial system which was the evil that the State intended to eliminate. It was unreasonable and arbitrary for the State to make the assumption that there is no difference in labor relations between the field of industry and employment in government service; and to classify Federal Government workers and their labor organizations in the same category with the employee in industry amounted to arbitrary regulation and discrimination.

No benefit ensued to the Railway Postal Clerk by virtue of the Labor Relations Act of the State of New York either in the procurement of his employment or in the security of its continuance. These factors were established by the Federal Government. The case at bar calls for a consideration of Section 43 and the related Sections 41 and 45 and whatever may be the national policy reflected in the setting up of the Fair Employment Practice Committee pursuant to executive Order No. 9346 it has no bearing upon the effect of the Civil Rights Sections herein presented. The Fair Employment Practice Committee Order was an executive directive designed to encourge full participation in the war effort, to get all available manpower into the war industries for the successful prosecution of the war and its foundation was rested upon the declaration that there should be no discrimination *in the employment of any person in war industries* solely by reason of race, creed, color or national origin, and in furtherance of the declared policy and of the Executive Order "to eliminate discrimination in regard to hire, tenure, terms or conditions of employment or union membership, because of race, creed, color or national origin," the Executive

Order recited that there is evidence that available and needed workers have been barred from employment in industries engaged in war production solely by reason of their race, creed, color or national origin, to the detriment of the prosecution of the war, the workers' morale and national unity and declared the intention of the President to reaffirm the policy of the United States that there shall be no discrimination in the employment of any person in war industries or in government by reason of race, creed, color or national origin and that it shall be the duty of all employers including the several Federal departments and agencies, and all labor organizations in furtherance of this policy and of this Order to eliminate discrimination in regard to hire, tenure, terms of employment, or union membership because of race, creed, color or national origin.

The mandate of the Order is contained in the following paragraphs thereof:

> "1. All contracting agencies of the Government of the United States shall include in all contracts hereafter negotiated or renegotiated by them a provision obligating the contractor not to discriminate against any employee or applicant for employment because of race, creed, color, or national origin and requiring him to include a similar provision in all subcontracts.
>
> "2. All departments and agencies of the Government of the United States concerned with vocational and training programs for war production shall take all measures appropriate to assure that such programs are administered without discrimination because of race, creed, color, or national origin." (Executive Order No. 9346.)

The earlier Executive Order, No. 8802, indicates the fundamental purpose that there shall be no discrimina-

tion in the employment of workers in defense industries or government because of race, creed, color, or national origin and declared in furtherance of said policy and of the Order that it is the duty of employers and of labor organizations to provide for full and equitable participation of all workers in defense industries without discrimination because of race, creed, color, or national origin.

James v. Marinship Corporation, 155 Pac. Rep. 2d Series 329, was an action arising out of labor relations in the field of industry where a labor union having a closed shop contract with the employer denied membership to workers in the craft because they were negroes. The negroes were forced out of employment and deprived of the opportunity to work whereby they suffered in their civil rights and sustained legal injury for which redress was sought in the action. The decision rested upon this fundamental point, the Court saying:

> "In our opinion, an arbitrarily closed or partially closed union is incompatible with a closed shop. Where a union has, as in this case, attained a monopoly of the supply of labor by names of closed shop agreements and other forms of collective labor action, such a union occupies a *quasi* public position similar to that of a public service business and it has certain corresponding obligations. It may no longer claim the same freedom from legal restraint enjoyed by golf clubs or fraternal associations. Its asserted right to choose its own members does not merely relate to social relations; it affects the fundamental right to work for a living. See Newman, The Closed Union and the Right to work (1943), 43 Col. L. Rev. 42, 44; Northrup, Organized Labor and the Negro (1944), 238-239; Chaffee, The Internal Affairs of Associations (1930), 43 Harv. L. Rev. 993, 1021-1023; Mintz, Trade Union Abuses (1932), 6 St. John's L. Rev. 272, 274-276; (1941) 40 Mich. L. Rev. 310."

The question presented in the case at bar was not passed upon by the California Court, which at page 342 of its opinion says:

> "Under the circumstances of this case, it is unnecessary to determine whether or not the union, in absence of a closed shop agreement, would be required to open its doors to all qualified employees."

The appellant is conscious of the fact that this cause comes to the Court at a critical time when the emotions aroused by agitation are apt to run high and assumptions are drawn in exaggeration; when economic welfare is the goal of all and propaganda is all agog over proposed legislation to curb discrimination in employment because of race, creed, color, national origin, or ancestry. In signing the so-called anti-racial bill, passed by the Legislature of the State of New York, Governor Dewey is reported to have said:

> "It must not be understood that the state is here attempting to impose itself as arbiter of social or personal likes or dislikes. By this act the State declares the simple principle that in employment there shall be no discrimination by reason of race, creed, color or national origin. It expresses the rule that must be fundamental in any free society—that no man shall be deprived of the chance to earn his bread by reason of the circumstances of his birth."

Where in this record does less appear?

II.

These briefs cite cases from this Court dealing with the dual powers of the Federal and State Governments under the Interstate Commerce Clause where separate powers exist within State borders when local law within the police

power may not conflict with federal regulation or where, in the absence of federal regulation, the local law may not be an obstruction or hindrance to interstate commerce. But as has been pointed out in appellant's brief the post office and post roads clause is comprehensive and exclusive and the validity of the local law is not a question of degree of the interference or regulation but rests on the question of the power of the State to make it at all.

Before entering upon his duties every Railway Postal Clerk and all persons employed in the postal service are required to take and subscribe to the following oath:

> "I, A. B., do hereby solemnly swear (or affirm, as the case may be,) that I will faithfully perform all the duties required of me and abstain from everything forbidden by the laws in relation to the establishment of post offices and post roads within the United States; and that I will honestly and truly account for and pay over any money belonging to the said United States which may come into my possession or control; and I also further swear (or affirm) that I will support the Constitution of the United States; so help me God." (Section 365, Title 5, Executive Departments; R. S. Sections 391, 392, March 5, 1874, c. 46, 18 Stat. 19.)

The hearings before the Congressional Committees in relation to the Lloyd-LaFollette Bill, which became the Act of August 24, 1912, c. 389, Section 6, 37 Stat. 555, gave a dismal history of the cumulative grievances of workers in the postal service generally and particularly in the division of the Railway Mail Service. These grievances covered every factor in the postal employment such as working conditions, hours, salary adjustments and promotions and furnished a sordid revelation as to the "gag" rules adopted by the Post Office Department on many occasions from time to time which in order to limit and oppose the right of the postal employee to improve his condition placed unreason-

able restriction upon his right of expression and his right, individually and collectively, to petition to the Congress for redress of his grievances. Such redress in a measure came from the enactment of the Lloyd-LaFollette Bill. (See "The Labor Movement in a Government Industry" by Spero, Chapter VII, *et seq.*)

It is respectfully submitted in conclusion that this should conclusively establish that the activities of the Railway Postal Clerk in relation to his duties and service have been immunized against the regulation imposed by Section 43 of the Civil Rights Law of the State of New York.

March, 1945.

DANIEL J. DUGAN,
Counsel for Appellant.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 691

RAILWAY MAIL ASSOCIATION,

Appellant,

against

EDWARD S. CORSI, AS INDUSTRIAL COMMISSIONER OF THE STATE OF NEW YORK, AND NATHANIEL L. GOLDSTEIN, AS ATTORNEY GENERAL OF THE STATE OF NEW YORK

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW YORK

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

NATHANIEL L. GOLDSTEIN,
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Counsel for Appellees.

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IN THE

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OCTOBER TERM, 1944

No. 691

RAILWAY MAIL ASSOCIATION,

against *Appellant,*

EDWARD S. CORSI, AS INDUSTRIAL COMMISSIONER OF THE STATE OF NEW YORK, AND NATHANIEL L. GOLDSTEIN, AS ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Appellees.

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

MAY IT PLEASE THE COURT:

Now come the appellees in the above entitled cause, by their counsel of record, and move that the appeal herein be dismissed, or that the order and judgment appealed from be affirmed.

Jurisdiction

Opinions of the courts below are reported as *Railway Mail Association* v. *Murphy*, 180 Misc. 868, 44 N. Y. S. 2d 601 (Spec. Term, Albany Co., Murray, J., Nov. 4, 1943), reversed, *Id.* v. *Corsi*, 267 App. Div. 470, 47 N. Y. S. 2d 404

(App. Div., 3rd Dept., Mar. 8, 1944), affirmed, *Id.* v. *Corsi*, 293 N. Y. 315 (Ct. Ap., July 19, 1944).

The appeal appears to be duly taken in point of time.

The questions involved are indicated by the opinions. Jurisdiction is asserted by the appellant upon the ground that the final judgment entered upon the decision of the highest state court was in favor of the constitutional validity of Section 43 and related provisions of the Civil Rights Law of the State of New York, as enacted by L. 1940, c. 9. As to this issue, the opinion of the Court of Appeals says:

> "There remains only the question whether a statute intended to restrict discrimination in membership by labor organizations is constitutional if applied to the plaintiff Association. The plaintiff does not challenge the validity of a statute which would prohibit such discrimination by 'labor organizations' to which the provisions of article 20 of the Labor Law apply. It challenges the validity of the statute, if construed in manner broad enough to include the plaintiff in its scope, on the ground that the exclusion of categories of workers from the application of article 20 and their inclusion in the application of section 43 would create 'arbitrary, capricious and unreasonable classifications' and would deny to the plaintiff organization the equal protection of law guaranteed by the Fourteenth Amendment of the Federal Constitution and would deny to the plaintiff due process of law. The plaintiff challenges the validity of the statute also on the ground that it constitutes an intrusion by the State into the field of postal service which under the Constitution is within the sole jurisdiction of the government of the United States.
>
> "The plaintiff in its brief makes abundantly clear the grounds upon which the Legislature might reasonably deny to civil service workers in the employ of a governmental unit the benefit of a statute intended

for the protection of the right of workers in other employment to bargain collectively with their employers. In its own official publications the plaintiff also makes abundantly clear the grounds upon which the categories of workers excluded from the application of the provisions of article 20 of the Labor Law may reasonably be included in the application of the provisions of the Civil Rights Law designed to give workers of every race, creed or color equality of opportunity to join organizations intended for collective action to improve the conditions of employment of the workers. In its official magazine, 'Railway Post Office,' the plaintiff published an article by its Industrial Secretary in which it said: 'Only through collective action have workers ever improved wage and working standards. And it is particularly true today that the worker either in industries or *the government service* who is not a member of his group organization is merely an unheard voice crying in the wilderness.' Whether or not these statements are wholly accurate is immaterial. At least they are not without foundation and the Legislature does not act arbitrarily or capriciously when it determines that no association of workers, whether in industry or in the civil service, which undertakes to speak and act collectively for such workers in improving wages and working standards may deny membership to a worker because of race, creed or color relegating him to the wilderness where he must cry unheard.

"The statute so construed does not impinge upon the powers of the Federal Government to conduct the mail service. The United States Government has recognized the right of mail clerks to organize for collective action in the presentation of grievances though not for collective bargaining. A statute in general terms which prohibits all labor organizations within this State, including organizations of workers in government service, from discriminating on the ground of race, creed or color violates no public policy of the

United States, does not interfere with or impede any government service and invades no field from which the State is excluded by the Constitution." (293 N. Y. at pp. 323-324; see also p. 318 where the plaintiff's contentions are stated.)

Motion to Dismiss or Affirm

The motion to dismiss or affirm is made upon the ground that the questions upon which jurisdiction is asserted are so unsubstantial as not to need further argument. This proposition is submitted upon the excerpts previously quoted from the opinion of the Court of Appeals.

Dated, October 25, 1944.

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ORRIN G. JUDD,
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WENDELL P. BROWN,
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HENRY S. MANLEY,
Assistant Attorney-General,
Of Counsel.

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APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW YORK.

BRIEF FOR APPELLEES.

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Counsel for Appellees.

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BATAVIA, N. Y.

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IN THE

Supreme Court of the United States

October Term, 1944.

No. 691.

RAILWAY MAIL ASSOCIATION,

Appellant,

against

EDWARD S. CORSI, as Industrial Commissioner of the State of New York, and NATHANIEL L. GOLDSTEIN, as Attorney-General of the State of New York,

Appellees.

Appeal from the Supreme Court of the State of New York.

BRIEF FOR APPELLEES.

History of the Case.

The opinions below are reported, under substantially the same title, at 180 Misc. 868, 44 N. Y. S. 2d 601 (Murray, J., Spec. Term N. Y. Sup. Ct., Albany Co., Nov. 4, 1943, R. 18-27), reversed, 267 App. Div. 470, 47 N. Y. S. 2d 404 (App. Div. 3rd Dept., Mar. 8, 1944, R. 29-32), the latter affirmed, 293 N. Y. 315 (Ct. Ap., July 19, 1944, op. by Lehman, Ch. J., R. 32-39).

Jurisdiction.

Appeal to this Court was taken pursuant to 28 U. S. C. § 344 (a). On December 18, 1944 an order was entered postponing further consideration of the question of jurisdiction until argument on the merits.

Responding to the third point of the appellant's present brief, no issue is joined. The doubt as to the jurisdiction of this Court to review the final action of a State court in a suit for declaratory judgment, inferred from the majority opinion in *Willing* v. *Chicago Auditorium*, 277 U. S. 274 (1928), was removed by the unanimous decision in *Nashville etc. Ry.* v. *Wallace*, 288 U. S. 249 (1932). The appellee State officials have never questioned that this suit by the Association against them presents a real and substantial controversy, however unbalanced in merits.

Questions.

The questions which have survived to this Court appear to be:

1. Is there constitutional objection, under the due process and equal protection clauses of the Fourteenth Amendment, against the statute of the State of New York (Civil Rights Law § 43, enacted by L. 1940 c. 9) which forbids all labor organizations, including the appellant Association, from denying membership in such organization by reason of race, color or creed?

2. Is there constitutional objection, under the provisions of the Constitution of the United States relative to post offices and interstate commerce, to the enforcement of such statute against the appellant Association, made up of white male members of the Railway Postal Service?

The Statute Involved.

Civil Rights Law § 43 was enacted by chapter 9 of the Laws of 1940, and is as follows:

> "§ 43. Discrimination by labor organizations prohibited. As used in this section, the term 'labor organization' means any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining, or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection. No labor organization shall hereafter, directly or indirectly, by ritualistic practice, constitutional or by-law prescription, by tacit agreement among its members, or otherwise, deny a person or persons membership in its organization by reason of his race, color or creed, or by regulations, practice or otherwise, deny to any of its members, by reason of race, color or creed, equal treatment with all other members in any designation of members to any employer for employment, promotion or dismissal by such employer."

Section 41, which was amended by the same chapter and has been further amended in 1941 and 1942, provides for the penalties. Section 45, added in 1942, vests certain powers of administration in the Industrial Commissioner.

Labor Law §§ 701 and 715, printed in the Association's brief, pages 4-5, have no present relevance. The Appellate Division and the Court of Appeals decided adversely to the Association (R. 31, 36-38) the contention, on which it was successful at Special Term (R. 21), that the Labor Law provisions are to be read *in pari materia* with the Civil Rights Law definition of "labor organization" and hence either provide an exception from the anti-discrimination statute directly applicable to the Association, or exceptions available to others which make the Association's inclusion unreasonable and discriminatory.

Facts.

The basic facts in the case are undisputed, and are set forth in the complaint (R. 1-10) and a stipulation (R. 11-14).

The complaint sets forth the facts concerning the organization of the Association, its racial restrictions, the unwillingness of its New York branch to be bound by the racial restrictions in view of their violation of the Civil Rights Law, and the threats of the Industrial Commissioner under advice of the Attorney-General to enforce the Civil Rights Law against the Association. Judgment is prayed declaring that the Association is not a "labor organization", that the application of the statute to it is unconstitutional if it is such an organization, and for an injunction restraining the enforcement of the statute.

The answer (R. 10-11) admits all the allegations of the complaint except certain conclusions of law respecting the definition of a "labor organization" and hence the status of the Association, and also except the unconstitutionality of the statute.

The stipulation deals with the mechanics of submitting the issues to the courts and lists certain documentary materials to be considered. The principal significance of this literature is to describe the activities of the Association. It is no longer needed for the purpose of proving that the Association is a "labor organization" within the meaning of the statute, that issue having been finally determined against the Association by the State courts, but may have some present relevance for showing that the Association's activities are of such nature that the State may reasonably extend its regulation over them, and that this can be accomplished without any unconstitutional interference with Federal jurisdiction.

The Association is a New Hampshire corporation, with branch organizations which operate in New York State.

For many years its Constitution has contained in Article III the following restriction upon membership:

> "Any regular male Railway Postal Clerk or male substitute Railway Postal Clerk of the United States Railway Mail Service, who is of the Caucasian race, or a native American Indian, shall be eligible to membership in the Railway Mail Association."

Likewise, its application blank has as part of its first question, immediately after blanks for the applicant's name and age: "My race or color is * * *".

Appointments to the Railway Mail Service and promotions in it are made pursuant to certain laws of the United States regulating the civil service. That there are, and have been for many years, a substantial number of Negro railway mail clerks, may be inferred from the complaint, and sufficiently appears from the literature mentioned in the stipulation (R. 12-13), particularly "*Handbook of American Trade Unions*", 1936 edition, being Bulletin No. 618 of the U. S. Dept. of Labor, pp. 37-38, 44, 310-311; and "*The Labor Movement in a Government Industry*", by Sterling D. Spero, a book published in 1924 and republished in 1927. See also "*Organized Labor and the Negro*", by Herbert R. Northrup, published by Harper & Bros., 1944, at pp. 2, 240-241.

The same texts attest that the Association's discrimination policy is deliberate, long-continued and well known.

Representation of railway postal employees in dealing with their governmental employer concerning grievances or terms or conditions of employment, is only one of several activities of the Association. In that field it has

not attained the position of being a sole bargaining representative or negotiated a closed shop agreement. In paragraph 22 of its complaint it disavows the right to strike as a method of redressing grievances. Its status in the labor field appears to be somewhere between the claims which the stipulated literature shows it as making to its membership, of having brought about nearly every advance in their pay and working conditions obtained in the past forty years, and the excessively modest representations made in its briefs in this litigation. Appellees will argue the constitutional issues upon the premise, fully established by the record, that the Association is a bona fide labor organization, which has achieved some appreciable changes in the Postal System for the benefit of its members. That non-members have shared in the benefit is asserted in the appellant's brief, page 30, and probably is true, although not necessarily in the equal measure asserted. The Court of Appeals summarizes the Association's activities as follows:

> "The purpose for which the plaintiff is constituted, as formulated in its charter, is 'to conduct the business of a fraternal beneficiary association for the sole benefit of its members and beneficiaries and not for profit; to promote closer social relationship among Railway Postal Clerks; *to better enable them to perfect any movement that may be for their benefit as a class* or for the benefit of the Railway Mail Service; to provide relief for its members and their beneficiaries and make provisions for the payment of benefits to them, in case of death, sickness, temporary or permanent physical disability, either as a result of disease, accident or old age.' (Italics through this opinion are supplied.)
> "The purpose of 'collective bargaining' is not included in the objects for which the plaintiff exists and is constituted. Membership in the plaintiff is confined to mail clerks who are civil service employees and the plaintiff and the defendants agree that the terms and conditions of employment of civil service employees

of the Post Office and of other departments or agencies of the Federal, State or City government must be fixed by governmental authority and not by collective bargaining.* The purpose of 'mutual aid or protection' and in proper case of discussing grievances with their employer and presenting demands or suggestions of their members *as a class*, is included by plain implication in the purposes set forth in the charter. Indeed, among the duties of the Industrial Secretary of the organization, prescribed in its constitution, is the duty to 'assist in the presentation of grievances pertaining to service conditions and endeavor to secure adjustment of such through administrative action.' The plaintiff joined the American Federation of Labor, which purports to be a federation of labor unions. It is denominated a labor union in the Bulletin of the Department of Labor of the United States. It is described as a trade union or labor organization in publications and reports concerning phases of the labor movement by students and organizations of recognized authority, including a recent publication of the Twentieth Century Fund. In its own publications the plaintiff Association claims the credit for bringing 'to every railway postal clerk many material benefits' and for 'many additional millions of dollars brought to the pockets of railway postal clerks each year by the efforts of the Association,' and it points out that 'reforms always come as the result of demands from the worker. If better conditions are worth securing, they must come as the result of organized effort.' An association constituted for the purpose of 'organized effort' and the presentation of concerted demands of workers as a class in order to secure material benefit and reforms in conditions of employment is a 'labor organization' both in common parlance and as defined in section 43 of the Civil Rights Law.

"That is true though the association may exist and be constituted 'in part' for other purposes. In this case the plaintiff Association conducts, pursuant to its charter, 'the business of a fraternal beneficiary association for the sole benefit of its members and beneficiaries and not for profit' and it furnishes insurance at cost

* See appendix to this brief.

to its members. Pursuant to its charter and ritual the plaintiff also seeks 'to promote closer social relations among Railway Postal Clerks' or rather among white Railway Postal Clerks eligible for membership in its Association. If these were its only objects it would not be a labor organization and would be free to admit or exclude from membership such persons as it chose, for good reason, for bad reason or for no reason, but it is undisputed that its objects are not so limited. Indeed, in its own publication it has said: 'The activity of the Association is directed along two distinct lines, promoting the welfare of railway postal clerks *by improving conditions under which they work,* and providing benefits for disability and death due to accidental means.' To carry out the second activity within the State of New York, the plaintiff Association applied for and received permission to do so from the Superintendent of Insurance, though he ruled that no license was necessary. The fact that the Association is lawfully providing insurance within the State for its members does not tend to show that its members are not associated in an organization which exists and is constituted 'in part' for objects which mark it as a 'labor organization' as defined in the Civil Rights Law." (R. 35-36, also 293 N. Y. at pp. 319-321).

The duties of the Association's Secretary, as set forth in its Constitution (Art. VII, §3) includes the duty:

> "To act as representative of members of the Railway Mail Association before the United States Employees' Compensation Commission."

Another exhibit in this case, the pamphlet printed by the Association about 1930 (R. 12), at page 9 makes an argument for membership based largely upon the benefits obtained by the Association for all railway postal clerks but includes the following arguments based upon a narrower economic interest:

> "Seniority rules—establishing certain fundamental principles governing promotions; preference for runs and assignments in an organization. The Railway Mail

Association is the only postal group having a seniority system recognized by the Department.

"The right of the individual to appeal to the head of the Department through your officers or regular department channels, any grievance.

* * * * *

"The Railway Mail Association furnishes the highest grade of accident insurance to its members, at cost."

POINT I.

The statute, in its application to the Association, does not violate the due process or equal protection clauses of the Fourteenth Amendment.

The argument under this point is intended to answer Point I of the appellant's brief. The argument of that Point seems to be fairly well represented by the following quotations from appellant's pages 30 and 32-33:

"To apply these Civil Rights sections to the appellant or to its division and branch associations or members would constitute an arbitrary and unreasonable regulation. It would be unreasonable to deprive the appellant or its members of the right to make selection in choosing members. Such choice does not constitute a discrimination which is unfair or unjust because it works no economic injury to any Railway Postal Clerk who is not a member of the appellant Association. The appellant has nothing to do in influencing the appointment or promotion in positions in the postal system where the rights appertaining thereto are fixed by the Civil Service Laws of the Federal Government. Any effort exerted by the appellant to advance the interests and welfare of the Railway Postal Clerks, if successful, redounds to the benefit of every Railway Postal Clerk in the same category whether he is a member of the appellant's Association or not. Consequently, the rights of no Railway Postal Clerk are adversely affected or limited and it is an unreasonable intervention

of the State under the circumstances of this cause to apply the State law to the appellant or its officers and members, and is offensive to the due process clause of the Fourteenth Amendment. It amounts to a deprivation of the property rights of the appellant and places an unreasonable limitation upon the ownership and management of its property and its right to the liberty of contract."

* * * * *

"The question of discrimination when applied to the case at bar is a sociological matter which, in the absence of a constitutional grant from the people to the government, cannot be regulated under the State Police Powers. Such discrimination is not unjust. It is a preference causing no injustice to anyone.

"It concerns a social relationship which must rest on voluntary action. The law cannot coerce its performance. We are all left free to choose. This is a personal and constitutional right beyond the power of legislation. The choice is inherent in the person. Tolerance may broaden the choice and benevolence may soften to the point of common acceptance. Education and the spirit of Christianity may efface the thought of social differences. Coercive legislation is not the remedy."

Appellant's argument under the Fourteenth Amendment, as now made, may be summarized as *lack of a public interest* in the Association's activities, or lack of a public interest of a kind and intensity which justifies legislation.

This argument was only briefly touched upon in the State courts, the appellant's argument under the Fourteenth Amendment until now having been confined almost entirely to an attack upon the statute as discriminatory, which argument depended upon a statutory interpretation the State courts have rejected (R. 37-38), and accordingly that constitutional argument is unavailable to the appellant in this Court.

It is not difficult to answer the argument under the Fourteenth Amendment now made on behalf of the Association. It will be discussed first in its broader form, as related to the general subject-matter of the statute, and then in its narrower form, as related to the Association's special circumstances.

The courts did not learn for the first time in 1944 about the possibilities for abuse which exist in unionism. *Shinsky* v. *O'Neil*, 232 Mass. 99, 121 N. E. 790 (1919); *Williams* v. *Quill*, 277 N. Y. 1, 12 N. E. 2d 547 (1938), ap. dis., 303 U. S. 621 mem.; *Matter of Miller* v. *Ruehl*, 166 Misc. 479, 2 N. Y. S. 2d. 394 (1938); *Carroll* v. *Local No. 269*, 133 N. J. Eq. 144, 31 Atl. 2d. 223 (1943). And racial discrimination in employment was known to be an evil in earlier years. *New Negro Alliance* v. *Grocery Co.*, 303 U. S. 552, 561 (1938). In the two New York cases cited, both in 1938, Chief Judge Crane and Justice Harris separately observed that legislation might provide the remedy for abuses by labor organizations. Three recent decisions by this Court are to similar effect, although announcing the principle that a union having power of exclusive representation exercises a trust subject to judicial correction, at least in certain matters. *Wallace Corp.* v. *N. L. R. B.*, 65 S. Ct. 238, 241-242, 247; *Steele* v. *Louisville & N. R. Co.*, 65 S. Ct. 226; *Tunstall* v. *Brotherhood*, 65 S. Ct. 235. Compare, *James* v. *Marinship Corp.*, 13 L. W. 2345, 154 P. 2d.—(Calif. Sup. Ct., Dec. 1944).

From the standpoint of public interest, and hence of constitutionality of the present statute as appellant now seeks to present that issue, the case for the legislation is well stated by Professor Sumner H. Slichter, in a foreword to *"Organized Labor and the Negro"* (by Herbert R. Northrup, published by Harper & Bros. 1944). Professor Slichter says that the book raises certain fundamental

questions about unions, illustrated by the history of the attitude of unions toward economic opportunity for Negroes, and that one of the questions is whether unions are private clubs or quasi-public institutions.

> "They started out as private clubs or fraternal societies. Many of them still retain the traditions and point of view of such organizations. The growth of unions in numbers and power, however, is causing them to be clothed with a public interest. More and more they are in a position to determine who is permitted to make a living in a particular trade, industry or locality. Consequently, their admission requirements are becoming a matter of public interest as the laws of New York, Kansas and Nebraska make plain."

The laws thus referred to are mentioned more specifically at page 239 and following of the text. Besides the New York statute involved herein, there are similar laws of Kansas (Acts of 1941 c. 265) and of Nebraska (Acts of 1941 c. 96).* At page 2 the text lists the Association among eight unions which are the larger and more influential organizations in the American labor movement and whose exclusionist policies have substantial effects on job opportunities for colored workers.

The fact that anti-discrimination legislation was pending in Congress in 1944, adverted to in the appellant's brief for the purpose of quoting certain arguments made by opponents of the legislation,** like the legislative history of the statute now involved and the reports and messages concerning it, also mentioned in the appellant's

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* Pennsylvania denies the benefits of its Labor Relations Act to labor organizations which discriminate as to membership (L. 1937, c. 294), and Illinois and New Jersey forbid racial discrimination in certain classes of employment.

** Appellant's brief, p. 33; also pp. 44-46.

brief,* essentially are an answer to the Association's present argument that the discriminatory activities of the Association and other labor organizations are not properly a matter of public concern. Instead of aiding the Association's present argument, they demonstrate the existence of a problem well within the field of legislative discretion, and at least greatly narrow the argument.

The narrow form of the appellant's argument depends upon adopting a narrow view of the Association's activities and their effectiveness in achieving better employment conditions. Indeed, to support the argument it is necessary to prove that the Association's effectiveness in that field is zero, not only for the present but in potentiality. The mere facts that the Association has not yet attained a power over the individual employee comparable with that wielded by some other labor organizations, and that the nature of civil service employment offers a restraint to the attainment of such power, are not sufficient.

Racial discrimination can and sometimes does exist in the public service, as is made clear by the activities of the FEPC and by the presidential order creating and empowering it.** And the Association is not so ~~important~~ impotent that

* Pages 34-36. The stipulation also includes reference to Governor Lehman's annual message of 1940 (R. 14). Official references to racial discrimination affecting employment in the State of New York may also be found in Governor Dewey's annual messages of 1943, 1944 and 1945, and a special message of 1944 recommending enactment of L. 1944 c. 692. See also, the recent Report of the New York State Temporary Commission against Discrimination, 1945 Legis. Doc. No. 6. Relative to the quotations in appellant's brief, page 35, from Governor Lehman's memoranda of 1939 and 1940, it should be noted that what was disapproved in the 1939 bill was its method of enforcement, by exclusion of offending labor organizations from provisions of the State Labor Relations Act. New York's anti-discrimination laws are intended to effectuate a general prohibition inserted in its Constitution in 1938, found in Article I § 11.

** See page 18 of this brief.

its discriminatory practices must necessarily and for all time fail to be, not merely a bad example in a place where a better one might be expected, but a positive influence for the evil. It is upon that ground that the Court of Appeals quoted the Association's own words in a manner which answers the narrow form of its present argument:

> "In its official magazine, 'Railway Post Office,' the plaintiff published an article by its Industrial Secretary in which it said: 'Only through collective action have workers ever improved wage and working standards, but it is particularly true today that the worker whether in industries or *the government service* who is not a member of his group organization is merely an unheard voice crying in the wilderness.' Whether or not these statements are wholly accurate is immaterial. At least they are not without foundation and the Legislature does not act arbitrarily or capriciously when it determines that no association of workers, whether in industry or in the civil service, which undertakes to speak and act collectively for such workers in improving wages and working standards may deny membership to a worker because of race, creed or color relegating him to the wilderness where he must cry unheard." (R. 39.)

At page 30 of its brief the Association argues that its every effort on behalf of railway postal clerks redounds to the benefit of all, non-members as well as members. That, we submit, is not entirely accurate for, as pointed out in the Statement of Facts, *supra*, the Association does act as the representative of its members in matters before the United States Employees' Compensation Commission, the individual members of the Association do have the right to appeal, through the officers of the Association, to the head of the Department concerning any of their grievances, and they are entitled to obtain from the Association the highest grade of accident insurance at cost.

The inference seems warranted that the Association's membership, and its membership policy now involved, sometimes influence its efforts on behalf of certain types of administrative or legislative action. For that matter, it would be difficult to convince the Negro clerks whose applications for membership gave rise to the present litigation, that the Association's efforts herein are impartially devoted to their interests.

It is submitted, upon the foregoing, that there was a legitimate public concern with the subject matter of Civil Rights Law § 43 which justified the prohibition it extended in 1940 over racial discriminations by labor organizations generally, and justified the inclusion of the Association within the scope of prohibition, although the Association is composed of a particular class of government employees and is not their exclusive representative. It is respectfully submitted that no valid ground of objection under the Fourteenth Amendment has been stated by the Association against the statute.

POINT II.

The statute, in its application to the Association, is not invalid as an interference with the Postal System or Interstate Commerce.

Like a tramp who asserts his immunity from constables because he is riding the rods of interstate freight, the Association claims a relationship with the Federal Government so intimate that its discriminatory acts are beyond State redress.

It will be noted that there is some inconsistency between the importance which the Association attaches to its function of employee representation for purposes of this argu-

ment, and its modesty concerning that function for purposes of arguing the preceding point. As previously stated, appellees will argue the constitutional issues upon the premise, fully established by the record, that the Association is a *bona fide* labor organization, which has achieved some appreciable changes in the Postal System for the benefit of its members.

Nevertheless, the Association's relationship to the Postal System falls considerably short of express recognition as an essential instrumentality of the Federal Government.*

The Lloyd-LaFollette Act of Aug. 24, 1912 (37 Stat. 555; 5 U. S. C. § 652), in the light of the events leading up to it (as to these, see *Spero's* text previously cited, pp. 96-185), assures all postal employees, and particularly railway mail clerks, that they have the right to belong to a labor organization, even to one affiliated with the American Federation of Labor, subject to the restriction that the affiliation must not impose an obligation to strike or be designed to aid a strike of postal employees. The relevant language of the Act is as follows:

> "Membership in any society, association, club, or other form of organization of postal employees not affiliated with any outside organization imposing an obligation or duty upon them to engage in any strike, or proposing to assist them in any strike, against the United States, having for its objects, among other things, improvements in the condition of labor of its members, including hours of labor and compensation therefor and leave of absence, by any person or groups

* At page 39 of appellant's brief it says, "We do not contend that the appellant is a governmental agency or instrumentality," but at page 37 it says that the Association's members, as railway postal clerks, are "instrumentalities of the postal system," and at pages 40-41 and 43-44 it makes an argument which is summarized at page 41 in the statement that the prohibition of State action rests on the entire absence of power on the part of the State to touch the instrumentalities of the United States.

> of persons in said Postal Service, or the presenting by any such person or groups of persons of any grievance or grievances to the Congress or any Member thereof shall not constitute or be cause for reduction in rank or compensation or removal of such person or groups of persons from said service. The right of persons employed in the civil service of the United States, either individually or collectively, to petition Congress, or any Member thereof, or to furnish information to either House of Congress, or to any committee or member thereof, shall not be denied or interfered with."

A similar tolerance has been extended more generally in recent years to organizations of Federal employees. President Roosevelt's letter of August 16, 1937, to Luther C. Steward, President of the National Federation of Federal Employees (cited by Mr. Justice Murray at R. 26), which has been widely quoted as the present executive view upon this matter, says:

> "Organizations of Government employees have a logical place in Government affairs. The desire of Government employees for fair and adequate pay, reasonable hours of work, safe and suitable working conditions, development of opportunities for advancement, facilities for fair and impartial consideration and review of grievances, and other objectives of a proper employee relations policy, is basically no different from that of employees in private industry. Organization on their part to present their views on such matters is both natural and logical * * *."

See the *"Handbook of American Trade-Unions,"* previously cited, at pages 298-307 of the 1936 edition, for lists of such organizations composed of Federal employees. See also, *"Employee Relations in the Public Service"* (Chicago, 1942), and Carol Aggar, *"The Government and its Employees,"* 47 Yale L. J. 1112.

That the policy of the statute is entirely consistent with the policy of the Federal Government in the same field is

shown by the Executive Order establishing the FEPC and defining its powers, particularly the provision:

> "I do hereby declare that it is the duty of all employers, *including the several Federal departments and agencies, and all labor organizations*, in furtherance of this policy and of this Order, to eliminate discrimination in regard to hire, tenure, terms or conditions of employment, or *union membership* because of race, creed, color or national origin." (E. O. 9346 of May 27, 1943; Code Fed. Reg., Cum. Sup., Book 1 page 1280; italics added.)

Compare, *Allen-Bradley Local* v. *Board*, 315 U. S. 740, 748-749.

Appellant's brief, in arguing that the statute is an unconstitutional interference with the postal service and interstate commerce, relies upon a broad array of cases, of which *Johnson* v. *Maryland*, 254 U. S. 51, seems to be most nearly relevant for present purposes, and none of them involves railway mail clerks. Two cases which do involve such clerks and which support the State's view are: *Price* v. *Pennsylvania R. Co.*, 113 U. S. 218, and *Martin* v. *Pittsburgh & L. E. R. Co.*, 203 U. S. 284.

The *Price* case and the *Martin* case each involved a statute of Pennsylvania which limited the liability of a railroad, in cases of suits by persons employed to work in or about the railroad, to the recovery they could have if they were employees of the railroad. In each case this statute had the effect of defeating the recovery.

The *Price* suit was brought by the widow of a "route agent" or railway mail clerk, employed by the United States, who had been killed in a railway collision while in discharge of his duties. In the *Martin* case the suit was by a railway postal clerk who had been injured in a wreck while engaged in his duties, and sued the railroad for his

injuries. The following excerpts from the opinion of Mr. Justice White in the *Martin* case indicate the decisions in both cases:

"Under the settled construction given to the statute by the Supreme Court of Pennsylvania the plaintiff, as a railway postal clerk, was not a passenger and had no greater rights in the event of being injured in the course of his employment than would have had an employe of the railroad company.

"Was the application of the statute thus construed to a railway postal clerk of the United States, in conflict with the power of Congress to establish post offices and post roads?

"In *Price* v. *Pennsylvania Railroad Co.*, 113 U. S. 218, this question was in effect foreclosed against the plaintiff in error. That case was brought to this court from a judgment of the Supreme Court of Pennsylvania, 96 Pa. St. 258, holding that a railway postal clerk was not a passenger within the meaning of the Pennsylvania act, and hence had no right to recover for injuries suffered by him in consequence of the negligence of an employe of the company. The Federal ground there relied upon was substantially the one here asserted; that is, the power of the Government of the United States to establish post offices and post roads, and the effect of the legislation of Congress and the act of the Postmaster General in appointing mail clerks thereunder. After fully considering the subject the case was dismissed because no substantial Federal ground was involved, the court saying (113 U. S. 221):

"'The person thus to be carried with the mail matter, without extra charge, is no more a passenger because he is in charge of the mail, nor because no other compensation is made for his transportation, than if he had no such charge, nor does the fact that he is in the employment of the United States, and that defendant is bound by contract with the Government to carry him, affect the question. It would be just the same if the company had contracted with any other person who had charge of freight on the train to carry him without additional compensation. The statutes of the United

States which authorize this employment and direct this service do not therefore make the person so engaged a passenger, or deprive him of that character, in construing the Pennsylvania statute. Nor does it give to persons so employed any right, as against the railroad company, which would not belong to any other person in a similar employment, by others than the United States.'

"This brings us to the second contention, the repugnancy of the Pennsylvania statute to the commerce clause of the Constitution. It is apparent from the decision in the *Price case*, just previously referred to, that in deciding that question we must determine the application of the statute to the plaintiff in error, wholly irrespective of the fact that at the time he was injured he was a railway postal clerk. In other words, the validity or invalidity of the statute is to be adjudged precisely as if the plaintiff was at the time of the injury serving for hire in the employ of a private individual or corporation.

"Under the circumstances we have stated, the case of *Pennsylvania Railroad Co.* v. *Hughes*, 191 U. S. 477, clearly establishes the unsoundness of the contention that the Pennsylvania statute in question was void because in conflict with the commerce clause. * * *

"The proposition that the statute denied to the plaintiff in error the equal protection of the laws because it 'capriciously, arbitrarily, and unnaturally,' by the classification made, deprived railway mail clerks of the rights of passengers which they might have enjoyed if the statute had not been enacted, is without merit. The classification made by the statute does not alone embrace railway mail clerks, but places in a class by themselves such clerks and others whose employment in and about a railroad subject them to greater peril than passengers in the strictest sense. This general difference renders it impossible in reason to say, within the meaning of the Fourteenth Amendment, that the legislature of Pennsylvania, in classifying passengers in the strict sense in one class, and those who are subject to greater risks, including railway mail clerks, in another, acted so arbitrarily as to violate the equal protection clause of the Fourteenth Amendment." (203 U. S. pp. 292-293, 296.)

It seems obvious that a law determining the risks that railway mail clerks assume, as a condition of their employment, and the extent to which injuries to them are recoverable from the railroads, has a much more direct effect upon the Postal Service than a law forbidding discrimination in union membership. Particularly is this so, if we consider the Association's activities as predominantly insurance and social relationships, as urged in some parts of its brief.

In *Houston* v. *Moore*, 5 Wheat. 1, this Court held constitutional a statute of Pennsylvania inflicting penalties upon members of its militia who refused to perform Federal service. At page 34 Mr. Justice Johnson, arguing that a State may make a violation of a Federal act an offense under State law also, said:

> "Witness also the crime of robbing the mail on the highway, which is unquestionably cognizable as highway robbery under the state laws, although made punishable under those of the United States."

In *United States* v. *Hart*, Pet. C. C., decided by Mr. Justice Washington at Circuit at about the same time as the case last cited (1817 and 1820, respectively) and cited with approval by Mr. Justice Holmes in deciding *Johnson* v. *Maryland*, 254 U. S. 51, 56, it was held that a mail carrier could be convicted and fined under a Philadelphia ordinance for driving his carriage recklessly through a crowded street. To similar effect is the opinion of the Attorney General of the United States in 1852 (5 *Op. Atty. Gen.* 554), likewise cited with approval, advising the Postmaster General that carriers of mail on railroads were not exempt from an ordinance of Jersey City prohibiting trains to move through the city at a speed greater than six miles per hour. See, to similar effect, dicta in *Illinois Central R. Co.* v. *Illinois*, 163 U. S. 142, 154, and *Mississippi R. R. Com.* v.

Illinois Central R. Co., 203 U. S. 335, 345. In *United States* v. *Kirby*, 7 Wall. 482, it was held that a carrier of mails might be arrested and detained upon a State indictment for murder, Mr. Justice Field saying at page 487:

> "Common sense will sanction the ruling we make, that the act of Congress which punishes the obstruction or retarding of the passage of the mail, or its carrier, does not apply to a case of temporary detention of the mail caused by the arrest of the carrier upon an indictment for murder."

Returning now to the case of *Johnson* v. *Maryland*, 254 U. S. 51, relied upon by the Association, it is to be noted that the mail carrier whom the State of Maryland attempted to punish for failure to obtain an operator's license by submitting to an examination and paying a fee of three dollars, was an employee of the Government and was driving its motor truck with mail from a point in Maryland to Washington, D. C., when he was arrested. No room was left for doubt that there had been a direct and substantial interference with the Postal Service. The opinion of Mr. Justice Holmes cited *United States* v. *Hart, supra*, and *Commonwealth* v. *Closson*, 229 Mass. 329, 118 N. E. 653, L. R. A. 1918 C 939, saying:

> "Of course an employee of the United States does not secure a general immunity from state law while acting in the course of his employment. * * * It very well may be that, when the United States has not spoken, the subjection to local law would extend to *general rules that might affect incidentally the mode of carrying out the employment*—as, for instance, a statute or ordinance regulating the mode of turning at the corners of streets." (254 U. S. at p. 56; emphasis added.)

But as to the case before it, the opinion said:

> "It seems to us that the immunity of the instruments of the United States from state control in the per-

formance of their duties extends to a requirement that they desist from performance until they satisfy a state officer upon examination that they are competent for a necessary part of them and pay a fee for permission to go on. *Such a requirement does not merely touch the Government servants remotely by a general rule of conduct,* it lays hold of them in their specific attempt to obey orders and requires qualifications in addition to those that the Government has pronounced sufficient. It is the duty of the Department to employ persons competent for their work and that duty it must be presumed has been performed." (254 U. S. at p. 57; emphasis added.)

The distinctions suggested by the emphasized language in those quotations are well illustrated by *State of Washington* v. *Wiles,* 116 Wash. 387, 199 Pac. 749, 18 A. L. R. 1163. That case, incidentally, is much more like *Johnson* v. *Maryland* than is the present case. Wiles had contracted with the United States to carry mail in Seattle in motor trucks which he furnished, together with their operators. He refused to obtain truck licenses, an information was filed against him and he was arrested, apparently at a time and place which did not interfere directly with the carrying of the mails. The Washington Supreme Court said, in the final paragraphs of its opinion:

"While it is true, generally speaking, that a state may not by its laws hamper and interfere with the free and orderly performance of governmental functions, by taxation or otherwise, yet that interference must be substantial and direct. Every indirect and immaterial interference with the conduct of government business is not violative of the principles upon which the federal government is founded and performs its duties. The rule of reason must control in all such questions; otherwise the states will be greatly hampered in the conduct of their affairs, without any corresponding benefit flowing to the national government.

"We are confident that the appellant is not, because of the facts of this case, relieved from complying with the state statute imposing upon him the motor truck license fee."

Upon like reason, applicable with stronger reason upon the facts of the present case, it is respectfully submitted that Civil Rights Law § 43 is not unconstitutional because of its application to the Association.

Finally.

For the reasons stated, it is respectfully submitted that the judgment below should be affirmed.

Albany, February 15, 1945.

NATHANIEL L. GOLDSTEIN,
Attorney-General of the
State of New York.

ORRIN G. JUDD,
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of Counsel for Appellees.

APPENDIX.

In quoting from the Court of Appeals opinion summarizing the Association's activities, the following sentence was starred for comment:

> "The plaintiff and the defendants agree that the terms and conditions of employment of civil service employees of the Post Office and of other departments or agencies of the Federal, State or City government must be fixed by governmental authority and not by collective bargaining."

Undoubtedly the statement is true as a generality, but it might be so understood that it would be misdescriptive of the Association's activities. We repeat, from pages 23-25 of our brief before the Court of Appeals, the following paragraphs:

The employers of the railway mail clerks are the officials of the Postoffice Department, or Congress and the other branches of the government itself. The purpose is to obtain from them improvement of pay and working conditions. The methods are described by Mr. Spero in Chapter XVI of his text, pp. 270-274; and see also 280-286, 296-297, 303-304. At page 270 he says:

> "Postal organizations have sought the attainment of their objects by direct dealing with the administrative chiefs and by bringing pressure to bear on Congress. Where the former method was unsuccessful or inadequate to the remedy sought, they have turned to the latter. The principal methods by which they have sought to influence legislation have been first, by lobbying and by presenting their cases to the Congressional committee of proper jurisdiction; second, by agitation and publicity through advertising conditions in the local press and through the organization of mass meetings; third, and seldom, by using their organized political power at the polls; and fourth, a method becoming less and less frequent, by playing politics 'back home.'

"Publicity and direct dealing with Congress have been the methods which have proved most successful. Though the associations had long tried to work with and through the Department and to influence the legislature in their behalf through a sympathetic executive, the method has not been satisfactory. The development of the postal labor movement has shown a definite trend away from such indirection."

At pages 258-259 Mr. Spero describes in some detail the method of "direct dealing with the administrative chiefs." Although his text refers specifically to negotiations and an agreement entered into in 1921, and departed from later in the same year, it appears elsewhere (see, for instance, an editorial in the "Railway Post Office," for Oct. 1940, vol. 42 p. 33) that such conferences and agreements have become a regular and more dependable feature of the collective bargaining or dealing between the Association and the higher officials of the postal service. The method described is as follows:

"At its [the Association's] suggestion, its national executive committee, the division superintendents, the General Superintendent of the railway mail service and the Second Assistant Postmaster General met together in a series of conferences and discussed a number of important administrative matters affecting the interests of the clerks and the service. Papers presented by the Association's representatives, dealing with hours of service, seniority, promotions, service rating system, the construction of railway mail cars, etc., formed the basis of the discussions. A joint subcommittee of the conference, consisting of three supervisory officials and three officers of the Association, drew up formal agreements affecting hours of service, seniority, promotions and terminal and transfer service. These agreements were approved by the General Superintendent and the president of the Railway Mail Association and submitted to the Second Assistant in the form of recommendations. That officer had

previously assured the joint conference that 'such agreements as may be reached will be carried out faithfully by the Department.' ''

The Constitution of the Association prescribes the following specific duties for the Industrial Secretary, besides collecting and compiling "data relative to wage standards and working conditions," "which may be of benefit in promoting the welfare of Railway Postal Clerks":

> "To assist in the presentation of grievances pertaining to service conditions and endeavor to secure adjustment of such through administrative action."
>
> "To act as the representative of members of the Railway Mail Association before the United States Employees' Compensation Commission." (p. 11 of item "a" in stipulation,—fol. 57.)

Those duties seem to be quite clearly, "dealing with employers, concerning grievances, terms or conditions of employment." The columns of "The Railway Post Office" (the official magazine of the Association) are constantly filled with reports of those and similar activities.

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Supreme Court of the United States

OCTOBER TERM, 1944

No. 691

RAILWAY MAIL ASSOCIATION,
Appellant,

v.

EDWARD S. CORSI, as Industrial Commissioner of the State of New York, *et al.*

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW YORK

Motion for Leave to File Brief as *Amicus Curiae* and Brief in Support Thereof

ARTHUR GARFIELD HAYS,
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APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW YORK

Motion for Leave to File Brief as *Amicus Curiae*

May it Please the Court:

The undersigned, as counsel for the American Civil Liberties Union, respectfully moves this Honorable Court for leave to file the accompanying brief in this case as *Amicus Curiae*. The consent of the attorney for the appellee only to the filing of this brief has been obtained.

Special reasons in support of this motion are set out in the accompanying brief.

March 3, 1945.

ARTHUR GARFIELD HAYS
Counsel for American Civil Liberties Union, *Amicus Curiae*

Supreme Court of the United States

OCTOBER TERM, 1944

No. 691

RAILWAY MAIL ASSOCIATION,

Appellant,

v.

EDWARD S. CORSI, as Industrial Commissioner of the State of New York, *et al.*

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW YORK

BRIEF OF AMERICAN CIVIL LIBERTIES UNION, AS *AMICUS CURIAE*

This is an appeal by the Railway Mail Association from a judgment of the Supreme Court of the State of New York entered upon the remittitur and final decision of the Court of Appeals of the State of New York dated July 19, 1944 (293 N. Y. 315). The appellant Railway Mail Association (herein called "plaintiff") presents nine assignments of error (R. 45-46). In brief, the plaintiff objects to the decision of the Court of Appeals in applying to it §43 of the Civil Rights Law of the State of New York, forbidding racial discrimination by a labor organi-

zation, and in upholding the constitutionality of said act as so applied. As the question of interpretation of the act is not here open to review, the sole question is the constitutionality of the act as interpreted by the Court of Appeals.

The plaintiff challenged the validity of the act on two grounds, one being that as interpreted it constitutes arbitrary classification and the other being that it is in conflict with the exercise of federal power.

The plaintiff is a foreign corporation organized under the laws of the State of New Hampshire, having thirteen branch associations located in the State of New York. Its membership is confined to "any regular male Railway Postal Clerk or male substitute Railway Postal Clerk of the United States Railway Mail Service who is of the Caucasian race or a native American Indian." These clerks are civil service employees of the United States employed through the exercise of the constitutional power of Congress "to establish Post offices and post Roads:"

§43 of the Civil Rights Law provides, in part, that "No labor organization shall hereafter, directly or indirectly, * * * deny a person or persons membership in its organization by reason of his race, color or creed * * *."

The plaintiff brought an action in the State Court for a declaratory judgment that this law did not apply to it and that, if applied to it, was beyond the constitutional power of the State Legislature. The Appellate Division of the Supreme Court of the State of New York (267 App. Div. 470) and, on appeal, the Court of Appeals of the State of New York (293 N. Y. 315), both unanimously held that the act was applicable to the plaintiff and, as interpreted, was a valid enactment of the state.

Interest of the American Civil Liberties Union

The *amicus curiae* herein is a national organization, many of whose members are residents and citizens of the State of New York. The object of the American Civil Liberties Union, as set forth in its charter, is the preservation and defense of civil rights. The Civil Liberties Union has consistently adopted the view that distinctions in civil rights based on race or nationality are "by their very nature odious to a free people whose institutions are founded upon the doctrine of equality." It has, therefore, advocated and supported any reasonable law forbidding discrimination in civil rights by reason of race, creed, color or national origin.

POINT I

Section 43 of the Civil Rights Law is not in conflict with any federal power.

1. The federal government has specifically limited itself in respect to the regulation of unions which may be joined by government employees.

The Act of August 24, 1912, Chap. 389 (37 Stat. 555; 5 U.S.C.A. §652), after prescribing the procedure by which civil service employees, such as postal service employees, may be removed, limits the right of removal on account of the union status, as follows:

> "Membership in any society, association, club, or other form of organization of postal employees not affiliated with any outside organization imposing an obligation or duty upon them to engage in any strike, or proposing to assist them in any strike,

against the United States, having for its objects, among other things, improvements in the condition of labor of its members, including hours of labor and compensation therefor and leave of absence, by any person or groups of persons in said Postal Service, or the presenting by any such person or groups or [of] persons of any grievance or grievances to the Congress or any member thereof shall not constitute or be cause for reduction in rank or compensation or removal of such person or groups of persons from said service. The right of persons employed in the civil service of the United States, either individually or collectively, to petition Congress, or any Member thereof, or to furnish information to either House of Congress, or to any committee or member thereof, shall not be denied or interfered with."

The plaintiff, in apparent recognition of this Act of Congress, limits its corporate purposes and activities so as to include the presentation of grievances without resort to strikes and collective bargaining.

The National Labor Relations Act (29 U.S.C.A., §152(2)) by its terms expressly excludes the United States or any state, as an employer.

The War Labor Disputes Act (50 U.S.C.A. App., §§1501-1511) adopts the same exclusion of government employees.

It appears, therefore, that the federal government in enacting laws relative to organized labor, either in time of war or peace, has excluded government employees except in so far as it has forbidden the removal of civil service employees for associating with other members of their group in the presentation of grievances. It would be difficult to point out any situation where, by implication, at

least, the police power of the states in respect to such a subject was more definitely reserved to the states. Congress has deliberately refrained from occupying this field.

2. On the particular subject of racial discrimination the federal government has declared a definite public policy as a war-time policy. By Executive Order 8802, issued June 25, 1941, there was established a Committee on Fair Employment Practice to eliminate discrimination in government departments and defense industries, and by Executive Order 9346, issued May 27, 1943, an amended order was issued defining the powers and duties of said Committee. This last order contains the following:

> "Now, Therefore, by virtue of the authority vested in me by the Constitution and statutes, and as President of the United States and Commander in Chief of the Army and Navy, I do hereby reaffirm the policy of the United States that there shall be no discrimination in the employment of any person in war industries or in Government by reason of race, creed, color, or national origin, and I do hereby declare that it is the duty of all employers, including the several Federal departments and agencies, and all labor organizations, in furtherance of this policy and of this Order, to eliminate discrimination in regard to hire, tenure, terms or conditions of employment, or union membership because of race, creed, color, or national origin."

This order also directs that all contracting and subcontracting agencies of the government of the United States shall include in their contracts and subcontracts a provision obligating the contractor not to discriminate against any employee on account of race or color and a further provision requiring all departments and agencies

of the United States engaged in vocational and training programs for war production not to engage in such discrimination. The Fair Employment Practice Committee is functioning and seeking to enforce this policy of nondiscrimination.

In the Matter of St. Louis Shipbuilding and Steel Company, No. 62, Jan. 10, 1945 (10 Daily Labor Rep., sec. D, 1/15/45).

Moreover, the recent decision of this Court in the case of *Steele* v. *L. & N. R. R. Company,* 323 U. S. , Dec. 18, 1944, also makes it clear that the Railway Labor Act (44 Stat. 577, as amended; 45 U.S.C.A. §151) and the National Labor Relations Act (*supra*) create rights and duties which must be exercised "without hostile discrimination." In that case this Court said:

> "Here the discriminations based on race alone are obviously irrelevant and invidious. Congress plainly did not undertake to authorize the bargaining representative to make such discrimination."

3. The remoteness of the state law in its effect on the operation of mail service also deserves special consideration.

This state law does not impose any restriction on the power of the federal government to conduct the postal service or to employ people for that purpose. It applies only to self-governing associations of employees which are free to conduct their own affairs within the limits of law. Under the constitution of the plaintiff, aliens but not negroes are eligible to membership (R. 2), but the federal government is free to do the opposite—to discriminate against aliens and to employ negroes. This prohibition of

the Civil Rights Law imposed on labor organizations does not directly affect the operations of the railway mail service (*Adair* v. *U. S.*, 208 U. S. 161), notwithstanding the fact that the connection is close enough so that Congress could, if it so desired, enact legislation which would supersede the application of the state act.

The operations of the mails are no more affected by this law than they would be by a state law which required unions to file annual accountings or to elect officers only by secret ballot. No one would contend that a requirement by the State of New York that such corporate organizations as the plaintiff be domiciled in that state (R. 3, 19, 23) would be invalid in the absence of federal legislation, but such a requirement would be far more drastic than one requiring such organizations not to engage in racial discrimination. While it must be conceded that a law of the State of New York forbidding the employment of anyone under eighteen years of age could not be applied to the federal government in employing mail clerks in that state, it does not follow that a state law which undertook to forbid a union from accepting persons under eighteen years of age as members would be invalid in the absence of conflicting federal legislation.

Recent decisions of this Court further show its reluctance to limit state powers on the ground of conflict with federal powers where it is possible to reach the conclusion that the two laws can exist side by side.

In the case of *Allen Bradley Local, et al.* v. *Wisconsin Employment Relations Board, et al.*, 315 U. S. 740, this Court considered the question as to whether a cease and desist order, issued pursuant to the terms of the state statute against mass picketing and threats of injury to employees and picketing of employees' homes, was in con-

flict with the National Labor Relations Act. The Court repeated the statement that it has long insisted that "an intention of Congress to exclude states from exerting their police power must be clearly manifested". (p. 749) It held in the particular case that "Congress has not made such employee and union conduct as is involved in this case subject to regulation by the federal Board" (p. 749) and that "here, as we have seen, Congress designedly left open an area for state control". (p. 750) This Court added:

> "Since the state system of regulation as construed and applied here can be reconciled with the federal Act and since the two as focussed in this case can consistently stand together, the order of the state Board must be sustained under the rule which has long obtained in this Court." (p. 751)

In the case of *Terminal Railroad Association of St. Louis* v. *Brotherhood of Railroad Trainmen*, 318 U. S. 1, the Railroad Association afforded terminal services and facilities for the sorting and switching of cars, nearly all of which moved in interstate commerce. The Brotherhood of Railroad Trainmen complained to the Illinois Commerce Commission over the failure of the railroad to provide cabooses for purposes of health, comfort and protection. The Commission, after appropriate proceedings, entered an order requiring the cabooses, and the railroad contested its validity on the ground that it was in conflict with federal powers.

In answer to the claim that Congress had occupied this field by various acts, the Court said (p. 4):

> "Appellant claims that there had been Congressional occupation of the field by virtue of the

> Boiler Inspection Act, the Safety Appliance Act, and the Interstate Commerce Act. It is not contended, nor do we understand, that these statutes, by themselves and uninplemented by any action of the Interstate Commerce Commission, lay down any requirement that cabooses shall or shall not be used on any of the runs in question. Nor is it contended that the Interstate Commerce Commission itself has sought to make any such requirement. At least in the absence of such action these acts do not themselves preclude the state order * * *."

It was further contended in that case that the order of the State Commission was in conflict with the Railway Labor Act, which provided for the settlement of disputes between carriers and employees, including "disputes involving train and yard-service employees of carriers." The Court assumed, without deciding, that the demand for caboose service and its refusal might constitute a dispute to be settled pursuant to the terms of the Railway Labor Act, and said (pp. 6-7):

> "The question is whether the Railway Labor Act, so interpreted, occupied the field to the exclusion of the state action under review. We conclude that it does not, and for the following reasons:
>
> "The Railway Labor Act, like the National Labor Relations Act, does not undertake governmental regulation of wages, hours or working conditions. Instead it seeks to provide a means by which agreement may be reached with respect to them. The national interest expressed by those Acts is not primarily in the working conditions as such * * *. The federal interest that is fostered is to see that disagreement about conditions does not reach the point of interfering with interstate commerce. * * *

"* * * But we would hardly be expected to hold that the price of the federal effort to protect the peace and continuity of commerce has been to strike down state sanitary codes, health regulations, factory inspections, and safety provisions for industry and transportation. * * * We hold that the enactment by Congress of the Railway Labor Act was not a pre-emption of the field of regulating working conditions themselves and did not preclude the State of Illinois from making the order in question."

In the case of *Cloverleaf Butter Co.* v. *Patterson, et al.*, 315 U. S. 148, this Court had before it the question of the validity of state action in respect to the inspection and seizure of packing stock butter required for the manufacture of renovated butter for interstate commerce, and held that the state regulation was inconsistent with the federal regulations. The Court said that the test to be applied "is the effect of that action upon the national regulatory policy declared by the federal statute * * *". (p. 153) "It must be clear that the federal provisions are inconsistent with those of the state to justify the thwarting of state legislation". (p. 156) The Court proceeded to illustrate its doctrine by reviewing the cases of *McDermott* v. *Wisconsin*, 228 U. S. 115, and *Savage* v. *Jones*, 225 U. S. 501, and thus pointed out that a state and federal law, each dealing with the protection of the public from fraud and adulteration in the sale of food, can exist side by side provided that the state law is only supplementary to, and not in conflict with, the federal law.

See, also:

Maurer v. *Hamilton*, 309 U. S. 598.

From what has already been set forth, we think it is clear that there is no substance to the contention that employees in the postal mail service are exempt from the police power of the state merely because they are employed in a service which Congress has the exclusive power to carry on.

§43 does not purport to regulate or control the conduct of railway mail employees as employees but only a policy of certain associations which they may or may not elect to join.

An analogous decision illustrating the direct and indirect effect of state legislation on a federal function, is found in the case of *Penn Dairies, Inc.* v. *Milk Control Commission of Pennsylvania*, 318 U. S. 261, where the state statute regulating the sale of milk was applied to milk purchased by agencies of the United States Government. The Court pointed out that a regulation of this kind which merely imposed added economic burdens on the government but imposed no direct regulation on it, was valid, and said:

> "* * * We may assume that Congress, in aid of its granted power to raise and support armies, Article 1, §8, cl. 12, and with the support of the supremacy clause, Article 6, §2, could declare state regulations like the present inapplicable to sales to the government. * * * But there is no clause of the Constitution which purports, unaided by Congressional enactment, to prohibit such regulations, and the question with which we are now concerned is whether such a prohibition is to be implied from the relationship of the two governments established by the Constitution.
>
> "We may assume also that, in the absence of congressional consent, there is an implied constitu-

> tional immunity of the national government from state taxation and from state regulation of the performance, by federal officers and agencies, of governmental functions." (p. 269)

See, also:

> *Martin* v. *Pittsburgh & L. E. R. R. Co.*, 203 U. S. 284.

The plaintiff's contention on this specific point seems to be reduced to the claim that since Congress has in effect suffered postal employees to associate for the presentation of grievances, the state is barred from passing any law applicable to unions to which associations of postal employees may belong, even though that law in no way conflicts with the permission given to postal employees to unite in the presentation of grievances. It seems clear under the authorities already discussed, and the arguments already presented, that the law is otherwise.

We submit further that the underlying principles which determine questions of conflict between the federal and state governments, as set forth in the cases cited herein, apply with equal force whether we deal with interstate commerce conducted by private parties or service rendered under the power "to establish post offices."

To repeat,—the act regulates the conduct of associations within the State of New York and does not in any way regulate, as such, the conduct of employees of the postal service. As said in the closing paragraph of the opinion of the Appellate Division of the State of New York (R. 32):

> "• • • We see here no attempt on the part of the state to infringe upon the federal power to

conduct the postal system or handle the mails. The racial discrimination forbidden by this statute is too far removed from the operations of the federal government even though membership in the plaintiff is limited to railway postal clerks and substitutes. There is no effort on the part of the state to regulate or interfere with the railway mail service. Quite the contrary. It is an effort to prevent racial and religious discrimination in all labor organizations operating within the state."

POINT II

Section 43 of the Civil Rights Law is not in conflict with the Fourteenth Amendment of the Federal Constitution.

The opinion of the Court of Appeals states that "plaintiff does not challenge the validity of a statute which would prohibit such discrimination by 'labor organizations' to which the provisions of article 20 of the Labor Law apply", but does challenge the validity of the act on the ground that, when considered in connection with article 20 of the Labor Law, its application to the plaintiff creates "arbitrary, capricious and unreasonable classifications * * *": (R. 38)

On the question of the validity of this act as against the charge of arbitrary and unreasonable classification, this petitioner is not desirous of being heard, because it seems clear that such question is without merit.*

The question of the inherent power of a state to forbid discrimination by labor organizations is, we submit, not before this Court because it was not raised in the court below.

* See Columbia Law Review, Jan. 1945, Vol. 45, No. 1, pp. 86-90.

McGoldrick v. *Compagnie Generale Transatlantique*, 309 U. S. 430;
State Farm Mutual Automobile Insurance Company v. *Duell*, 323 U. S. , No. 115, October term, 1944.

But in view of the fact that the plaintiff largely abandons its contention of arbitrary classification and devotes itself primarily in Point I of its brief to discussing the inherent power of the state to deal in general with such a subject, we are including that point in this brief. Under this point the plaintiff's main contention seems to be, in substance, that the Railway Mail Association is a social organization and not an economic one comparable to a trade union and that the power of the Legislature to regulate labor unions in respect to discrimination does not extend to such a social organization.

Petitioner submits that the facts do not support such a contention and that the entire record shows that the organization is predominantly economic. The opinion of the Court of Appeals finds:

> "The purpose of 'mutual aid or protection' and in proper case of discussing grievances with their employer and presenting demands or suggestions of their members *as a class* is included by plain implication in the purposes set forth in the charter. Indeed, among the duties of the industrial secretary of the organization, prescribed in its constitution, is the duty to 'assist in the presentation of grievances pertaining to service conditions and endeavor to secure adjustment of such through administrative action.' " (R. 35)

In fact, two pages of the Court of Appeals opinion (R. 35-6) proves beyond question that plaintiff is an economic

organization identical in many particulars with the usual type of labor organization. Nor is this fact changed by the provision in the constitution of the plaintiff providing for the promotion of closer social relations, for, as is well known, most labor unions include provisions and activities which are purely social in character. If plaintiff wishes the status of a fraternal organization, it should shun the functions of a labor organization. In dealing with this point, on page 30 of its brief the plaintiff is in effect attempting to reargue the unreviewable conclusion of the state court that it is a labor organization.

The very fact that the plaintiff seems driven to claim that its organization is a social one seems to be an implied recognition of the power of the State Legislature to regulate racial discrimination by labor organizations, but even though there were no such implied recognition, we submit that the authorities make it clear that such power does exist and its proper exercise does not constitute a violation of the Fourteenth Amendment.

§43 implements the general public policy of the State of New York in providing for equality of treatment of rights fundamental and inherent to all citizens. Persons may not be excluded from restaurants, hotels or other places of public accommodations on the basis of race, creed or color and other statutes extend similar protection in other fields.* These laws have all been enacted under

* N. Y. Constitution, Article 1, Section 11.
Alcoholic Beverage Control Law, Section 65.
Civil Rights Law, Sections 13, 40-45.
Civil Service Law, Section 14-c.
Education Law, Section 36.
Insurance Law, Section 209.
Judiciary Law, Section 467.
Labor Law, Section 220-e.
Penal Law, Sections 514, 515, 700, 701, 1191.
Public Housing Law, Section 223.
Public Service Law, Section 79.
Tax Law, Section 4.

the police power of the state to protect the public health, morals, welfare and safety of its citizens and residents.

In the Civil Rights Cases (109 U. S. 3) the Supreme Court stated that State Civil Rights Laws were appropriate to secure negro equality, and in striking down Congressional legislation which forbade discrimination against negroes in places of public entertainment and transportation such as inns and railroads, the Court said (at p. 17) that the rights of persons aggrieved "may presumably be vindicated by resort to the laws of the State for redress". (See Fraenkel, 150 Years of the Bill of Rights, 23 Minnesota Law Review 719, 733). There can be no doubt, therefore, that legislation protecting a basic civil right, if reasonable and directed to the elimination of the particular evil infringing that right, is a valid exercise of the state's police powers. The Equal Rights Statutes existing in 22 states have all been passed on the theory that freedom from racial or religious discrimination is a fundamental civil right. (*Hirabayashi* v. *U. S.*, 320 U. S. 81).

In the case of *New Negro Alliance* v. *Grocery Company*, 303 U. S. 552, where the Court interprets the Norris-LaGuardia law, it was clearly stated that the right to protect workers against discrimination, on account of race or color, was fully as important as the right to protect them against discrimination on account of union affiliation and, of course, this Court is fully familiar with the fact that both state and federal governments acting within their respective jurisdictions have the right under the police power to protect union members from such latter discrimination. In this connection in the *New Negro Alliance* case this Court (p. 561) says:

> "The desire for fair and equitable conditions of employment on the part of persons of any race, color, or persuasion, and the removal of discriminations against them by reason of their race or religious beliefs is quite as important to those concerned as fairness and equity in terms and conditions of employment can be to trade or craft unions or any form of labor organization or association. Race discrimination by an employer may reasonably be deemed more unfair and less excusable than discrimination against workers on the ground of union affiliation."

The Supreme Court in many cases has already held that the right to work and to engage in a profession is a civil right. In *Truax* v. *Raich*, 239 U. S. 33, in outlawing a state statute which placed restrictions on the right of aliens to be employed within the state, the court said, at page 41:

> "It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the (14th) Amendment to secure * * * if this could be refused solely upon the ground of race or nationality, the prohibition of the denial to any person of the equal protection of the laws would be a barren form of words."

The trade union today in many fields controls the major source of the supply of labor.*

Whether a particular union exercises such a control today is immaterial, as society may find it in that position

* See Witmer, Civil Liberties and the Trade Unions, 50 Yale Law Journal 621, 624. Cf. Chafee, The Internal Affairs of Associations, 43 Harvard Law Rev. 996.

tomorrow. With current developments in the labor field, the importance of union membership in its relation to the fundamental right to work has become increasingly self-evident. In fact, this appellant recognizes this fact as applicable to itself when it says:

> "Only through collective action have workers ever improved wage and working conditions, but it is particularly true today that the worker, whether in industries or the government service, who is not a member of his group organization is merely an unheard voice crying in the wilderness." (R. 39)

More and more courts are recognizing that membership in a trade union is no longer comparable to membership in a London gentlemen's club.

> *James* v. *Marinship Corporation,* California Supreme Court, December, 1944;
> *Steele* v. *L. & N. R. R. Co.,* 323 U. S.

It is conceded that labor unions may set reasonable standards of qualifications for admissions, such as skill, but it has never been shown that race, creed or color may be considered a reasonable basis of eligibility. This Court in many cases has condemned irrelevant distinctions on the basis of race or nationality where fundamental rights are involved (*Hirabayashi* v. *U. S.*, 320 U. S. 81 at p. 100). Thus racial discrimination has been prohibited as a basis for determining qualifications for engaging in business (*Yick Wo* v. *Hopkins,* 118 U. S. 356), or for the exercise of the right to vote (*Smith* v. *Allwright,* 321 U. S. 649), or for residence purposes (*Buchanan* v. *Warley,* 245 U. S. 60).

Under the rationale of these cases it is clear that race, color or creed cannot be considered a reasonable basis for admission to trade unions.

A statute, therefore, which effectively and indirectly insures negroes the right to work by prohibiting unions from discriminating in membership standards based on race, color or creed, clearly is a reasonable and proper exercise of the state's police powers.

Conclusion

It is submitted that the appellant is a labor organization seeking, as one of its major objects, the protection and improvement of the employment status of its members; that it is within the police power of the state to forbid racial discrimination by such organizations because such organizations are so closely related to the vital civil right of pursuing a trade or profession; and that Congress has left the states free to apply such laws to mail service employees.

Respectfully submitted,

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IN THE

Supreme Court of the United States

October Term, 1944

No. 691

RAILWAY MAIL ASSOCIATION,

Appellant,

against

EDWARD S. CORSI, as Industrial Commissioner of the State of New York, and NATHANIEL L. GOLDSTEIN, as Attorney General of the State of New York.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW YORK.

MOTION AND BRIEF FOR THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE AS *AMICUS CURIAE*.

WILLIAM H. HASTIE,
THURGOOD MARSHALL,
LEON A. RANSOM,
Counsel for the National Association for the Advancement of Colored People.

EDWARD R. DUDLEY,
Of Counsel.

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ON APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW YORK.

MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE.*

To the Honorable, The Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The undersigned, as counsel for and on behalf of the National Association for the Advancement of Colored People, respectfully move that this Honorable Court grant them leave to file the accompanying brief as *Amicus Curiae.*

The National Association for the Advancement of Colored People is a membership organization which has for the past thirty-five years continuously advocated full citizenship rights for all American citizens. This Association has dedicated itself to work for the achievement of

functioning democracy and equal justice under the Constitution and laws of the United States.

As will more fully appear in the accompanying brief, this Court is here asked to decide whether a section in the New York Civil Rights Law which forbids denial of membership in any labor organization to any person by reason of his race, color or creed is applicable to a labor organization composed of members employed by the United States and engaged in the Postal Service. The question is essentially whether the Constitution and laws of the United States forbid a State from enacting such a law applicable to and regulating equally the conduct of any labor organization operating within the State, regardless of whether the said organization is composed of employees of the United States, the State or private employers.

It is to present written argument on this issue, fundamental to the good order and economic security of the community, that this motion is filed.

The Attorney General of New York, on behalf of both appellees, has consented to the filing of this brief. Counsel for appellants has been requested but has refused to consent to the filing of this brief.

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EDWARD R. DUDLEY,
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BRIEF FOR THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE AS *AMICUS CURIAE*.

Opinions Below.

Statutes Involved.

The opinions below and the statutes involved are set out in full in the record and in the briefs for both parties filed herein.

Question Presented.

The question presented by this Appeal and to which this brief is addressed is:

Is the Statute of the State of New York (Civil Rights Law, Section 43, enacted L. 1940, C.9) which forbids a labor

organization, including the appellant association, from denying membership in such organization by reason of race, color or creed unconstitutional?

Statement of the Case.

The appellant herein is a foreign corporation organized under the laws of the State of New Hampshire. Through subordinate local units functioning in different parts of the State of New York it carries on the business of the corporation as set out in its charter, viz., "to conduct the business of a fraternal beneficiary association for the sole benefit of its members and beneficiaries and not for profit; to promote closer social relationship among railway postal clerks; to better enable them to perfect any movement that may be for their benefit as a class or for the benefit of the Railway Mail Service, * * *".

Membership in the Association is limited by its Constitution to "any regular male railway postal clerk or male substitute postal clerk of the United States Railway Mail Service who is of the Caucasian race or native American Indian." Section 43 of the New York Civil Rights Law provides in part that, "no labor organization shall hereafter, directly or indirectly * * * deny person or persons membership in its organization by reason of his race, color, or creed * * *.

Appellant brought an action for a declaratory judgment seeking to have the Court hold that Sections 41, 43 and 4[illegible] of the Civil Rights Law of the State of New York and the provisions of the labor law do not apply to appellant and that the Railway Mail Association is not a labor organization within the meaning and contemplation of said laws. Appellant also asked the Court to declare "that if sought to be applied to the appellant therein, such laws are in contravention to the Constitution of the Unied States."

The appellees, the Industrial Commissioner of the State of New York and the Attorney General of the State of New York, deny appellant's allegation that it is not a labor organization within the meaning of Section 43 of the New York Civil Rights Laws, and the Court of Appeals held that appellant is in fact and law a labor organization within the meaning of said statute.

ARGUMENT.

I.

Analysis of Appellant's Claim of Unconstitutionality.

So much of the claim of the appellant as is founded upon constitutional grounds asserts in essence that the application of Section 43 of the New York Civil Rights Law to appellant is made pursuant to arbitrary and unreasonable classification, and at the same time is an unwarranted invasion of an area of Federal jurisdiction and control. The latter contention cannot mean that a private organization, particularly a foreign corporation, functioning within a State is beyond reach of the police power of that State because its members are employees of the United States. To be even colorable, any argument of interference with a federal function in such a case as this must purport to show that in attempting to promote its own soverign interests the State is actually or potentially impeding the nation's business or overriding national authority.

To test this contention it becomes necessary to examine the occasion for and the effect of the legislation in question. Such examination will reveal that the application of Section 43 to appellant does not interfere with any Federal function and at the same time that it is predicated upon reasonable classification. Thus, both branches of the argument of un-

constitutionality become untenable in the light of an exposition of the social and economic basis and effect of Section 43.

II.

Social and Economic Effects of Union Discrimination.

Throughout the history of American organized labor the exclusion of Negroes from labor unions has promoted strife between white and colored workmen and operated as a disturbing factor of major importance in industry and commerce. Resultant disorders have been so frequent and so serious as to constitute a substantial menace to the general security.

As early as 1855, in the State of New York, when white longshoremen who monopolized the port of New York were called out on strike, unorganized Negroes were called in as strikebreakers. Disorder and rioting were the results.[1] This is not an isolated case. The sequence of certain unions excluding Negroes, white workmen striking, unorganized and embittered Negro strikebreakers replacing the whites, and then serious racial strife, has been a familiar pattern in American industrial life for almost a century.[2]

The great Knights of Labor strike of 1886,[3] the national steel strike of 1919 broken by some 40,000 unorganized

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[1] Wesley, Negro Labor in the United States (1927) 79-80.

[2] See Cayton and Mitchell, Black Workers and the New Unions (1939); Franklin, The Negro Labor Unionist in New York (1934); Northrup, Organized Labor and the Negro (1944); Reid, Negro Membership in American Labor Unions (1930); Spero and Harris, The Black Worker (1931); Wesley, *op cit. supra* note 1.

[3] See Northrup, *op cit. supra* note 2, at 78.

Negro workmen,[4] the continuing racial strife over railroad employment,[5] the scandalous spectacle of our present war effort being impeded by the failure of unions to accept Negro workers are but the most sensational manifestations of a grave social and economic evil.

The total social effect of such events recurring in community after community is hurtful beyond measure. As one commentator has put it:

> "Aside from availability in strikes, the employment of Negro labor is used to intimidate the white workers and to serve as a threat that should they give up their jobs they may find them filled by the colored workers. The exclusion of Negroes from the white unions has aided the employers' purpose, since the more Negroes he can intermingle in the plant the fewer are the possibilities of complete union organization.
>
> "One of the deplorable results of this opportunism on the part of the Negro is to breed animosity between white and colored workers, which, along with other types of irritations, becomes the tinder to set alight some spark of friction into a roaring flame of race hatred. The grave social tragedy which sometimes results from such a situation is described in a report of the conditions arising in connection with a strike in Chicago, from which the following excerpt is taken:
>
> "'It was natural that the strikers outside, whose children were hungry, who saw their desire thwarted to build on monthly payments a home for themselves, should find a strong feeling growing against those who, perhaps all unconsciously, were lowering, not raising, the standard of living of the

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[4] See passim Commission of Inquiry, Interchurch World Movement, Report on Steel Strike of 1919 (1920).

[5] See Northrup, *op cit. supra* note 2, Ch. 3.

community. A new prejudice was developed against the strike-breaker, whether he was Greek or colored, who was a commodity of labor hauled and delivered from one labor battlefield to another. These immigrant workers took at his human value the colored worker who joined the union, or who worked by their side and was a pleasant person. But the colored strike-breaker was a different creature.' "[6]

The 1924 Convention of the National Association for the Advancement of Colored People expressed the general alarm of thoughtful persons with reference to this critical situation in the following open letter "to the American Federation of Labor and other groups of organized labor":[7]

"For many years the American Negro has been demanding admittance to the ranks of union labor.

"For many years your organizations have made public profession of your interest in Negro labor, of your desire to have it unionized, and of your hatred of the black 'scab.'

"Notwithstanding this apparent surface agreement, Negro labor in the main is outside the ranks of organized labor, and the reason is, first, that white union labor does not want black labor, and secondly, black labor has ceased to beg admission to union ranks because of its increasing value and efficiency outside the unions.

"We face a crisis in inter-racial labor conditions; the continued and determined race prejudice of white labor, together with the limitation of immigration, is giving black labor tremendous advantage. The Negro is entering the ranks of semi-skilled and skilled labor and he is entering mainly and necessarily as a 'scab.' He broke the great steel strike. He will

[6] See Feldman, Racial Factors in American Industry (1931), at 33.

[7] Quoted in Spero and Harris, *op. cit. supra* note 2, at 144.

soon be in a position to break any strike when he can gain economic advantage for himself.

"On the other hand, intelligent Negroes know full well that a blow at organized labor is a blow at all labor, that black labor today profits by the blood and sweat of labor leaders in the past who have fought oppression and monopoly by organization. If there is built up in America a great black bloc of non-union laborers who have a right to hate the unions, all laborers, black and white, eventually must suffer.

"Is it not time then that black and white labor get together? Is it not time for white unions to stop bluffing and for black laborers to stop cutting off their noses to spite their faces?"

The State of New York has experienced its full share of the evil consequences of racism in labor organization. From the already cited waterfront strike of 1855 to the Ward Line strike of 1895, racial clashes arising out of union exclusion kept New York in intermittent turmoil. Rioting, violent death and large scale property destruction were the recurrent fruits of divisive and discriminatory union practices. This sorry chapter of New York history is briefly summarized in the most frequently cited treatise on American Negro labor:

"The Negro came into longshore work in the North before the Civil War. He was brought in for the most part as a strike breaker or as an instrument to divide and weaken white workers. His use for such purposes was so extensive that his presence came generally to be resented, even when his employment was altogether innocent of anti-organization designs. This resentment was frequently so bitter as to result in riot and bloodshed. Such a riot broke out in New York in 1855 when Negroes were used to break a water front strike. The situation was re-

peated in Buffalo in the summer of 1863 when the boss stevedores tried to fill the places of former white workers with Negroes and provoked a serious fight in which twelve black men were badly beaten, while one was killed in the fighting and two were drowned. The predominant longshore group of the day was the Irish, who were then seldom employed at anything but the cheapest common labor and, accordingly, resented competition in new and better kinds of work in which they were just gaining a foothold. Riots almost as serious as that in Buffalo were reported in Chicago, Detroit, Cleveland, Albany, New York, Brooklyn, and Boston when Negro strike breakers, brought in to take the places of Irish strikers, were greeted by floods of bricks, stones, and broken bottles. During the spring of 1863 rioting between the two races along the New York water front was frequent, and injury and death often resulted.

"In June of that year, shortly before the trouble in Buffalo, three thousand Irish longshoremen in New York lost a strike for higher wages largely because of the introduction of black labor under police protection. A month later these defeated Irish longshoremen led the draft riots in an attempt to resist forced military service in behalf of Negroes whom they feared and hated as their industrial rivals.

"Despite indications and the fears of the Irish, the Negro failed to gain a prominent place in longshore work at this time. In fact, his role along the water front in New York and the North generally became less and less important, while the Irish held their own. They continued to dominate the trade down to 1887 when the shipping companies in New York turned to Italians to break the 'big strike,' led by the Knights of Labor. Several lines also used Negro strike breakers on this occasion, but let most of them go when their old men returned. Six years later, in an extensive strike in Brooklyn, Italians and Negroes brought from the South were again used as strike breakers, but it was the former, who had been

becoming an increasingly important factor in the industry for the past six years, who really broke the strike. Fights and brawls between the Irish strikers and Italian scabs took place all along the water front. At times the situation became so serious as to require the calling of police reserves. Soon the strike took on an interracial aspect and became a fight against the Italians. Every Italian who came near the water front, even though he had nothing whatever to do with the strike, was in danger of attack. The fruit vendors and peanut men who used to ply their trades along the docks dared not show themselves. In one instance, according to the newspapers, an Irishman who was mistaken for an Italian 'because he wore a sloven hat' was chased for blocks and pounded before he could explain. Apparently, it is not the Negroes alone who have suffered as a group because some of its members have taken the places of men on strike."[8]

More recently, following the disastrous Harlem race riot of March 19, 1935, the Mayor's Commission on Conditions in Harlem as well as private agencies undertook to survey the condition of Negro labor in New York. One of the results of this effort was a definitive study by Charles L. Franklin, published in book form in 1936 and entitled "The Negro Labor Unionist in New York." While noting a numerical increase in Negro unionists in Manhattan from 1,385 in 1910 to 39,574 in 1935, and a corresponding spread in occupational distribution, Dr. Franklin concludes his historical and analytical study with this statement:

"The foregoing facts and conclusions warrant two further conclusions—of a more general nature. First, the labor union situation in Manhattan as it affects Negroes is similar to that in the United States as a whole. In Manhattan there is represented every type of labor union relation, practice and policy in

[8] *Id.* at 179-199.

regard to Negro workers, as was found by investigators (mentioned in the preface) to exist in the United States. It has already been pointed out above that these practices vary from acceptance of Negro workers into membership on an equal basis with white workers, as in the International Ladies' Garment Workers' Union, to a complete exclusion of Negro workers by constitutional provision as in the Masters, Mates and Pilots of America, the railroad Brotherhoods and others. Between those two extremes are the unions that put Negro workers in separate locals or in auxiliary bodies responsible to white unions, those that neither discourage nor encourage Negro workers to join their ranks and those organized independently by Negro workers. Just as the absence of membership or limitations on full membership of Negroes in unions over the entire United States produced the net result of their not being able to gain a prominent position in the industrial life of the American people, so did the same conditions in Manhattan prevent Negro workers there from gaining a desirable place in the local labor movement and industrial life. Lack of organization has deprived them of the means whereby they could maintain proper standards of living and assure themselves of sufficient power to combat low wages, deplorable working conditions, unjust discrimination and, in general, all forms of injustice. However, although there is this similarity between Manhattan conditions and national conditions, there is some difference in degree. In Manhattan conditions are not quite so serious as in the United States as a whole."[9]

Another measure of the social consequences of racial discrimination by unions controlling large areas of employment is to be found in the disproportionately large part of the burden of public relief represented by indigent Negroes

[9] See Franklin, *op. cit. supra* note 2, at 266.

unable to find work. In the State of New York, according to the Unemployment Census of 1937, Negroes constituting 3.3 per cent. of the population, constituted 9.4 per cent. of the unemployed. Out of 320,826 Negroes of employable age, 91,071 were unemployed.[10] To remedy such a condition becomes one of the most serious responsibilities of the State.

The enactment of Section 43 was recommended to the New York Legislature by the New York State Temporary Commission on the Condition of the Colored Urban Population in its Report of February, 1939.[11] The Report fully confirmed and amplified the earlier private findings as to the widespread existence and hurtful consequences of union discrimination. The following excerpt is particularly noteworthy:

> "Collective bargaining may be considered in one aspect a private agreement between an employer and his employees concerning only the interests of those responsible for the agreement. In another sense, however, such an agreement becomes a broader matter and one concerning the general public interest, for it involves not only wage levels for the persons in question and the standard of living of a portion of the community, but also, in the case of a closed shop, even the work opportunities available to those who are not participants in the agreement." * * *
>
> "That many unions are guilty of such unfair practices especially toward the Negro group, is a matter of proven fact. It is openly admitted, even by trade-union leaders, that a considerable number of international unions exclude Negroes from membership and privileges, either by provision in the international constitution, or by practices in the

[10] Compiled from United States Census of Partial Employment, Unemployment and Occupations, 1937.

[11] Published by the State as Legislative Document (1939) No. 69.

ritual of initiation, or by tacit understanding among their officers." * * *

"The Commission has no complete figure showing the New York State membership of these unions, but it is sufficiently large and numerous to exercise an important influence on the policies of organized labor toward Negro membership." * * *

"Refusal of membership to Negroes has been reported in many building trade-union locals, where again no constitutional bar to Negro membership exists and where discrimination is accomplished solely on the authority of local officials. Only a strong revolt on the part of the liberal members of the painters' union of New York City broke down a discriminatory policy which has been practiced toward the Negro painters of the city." * * *

"It is with these considerations in mind that the Commission has recommended legislation designed in some measure to protect workers of minority groups from unfair discrimination by labor unions." [12]

III.

Reasonableness of Section 43 and Its Application to Appellant.

It is in this setting and in the light of this history that the enactment of Section 43 of the Civil Rights Law in 1940 must be considered. Experience had shown clearly that the avoidance of strife between white and Negro workers and their partisans, the assurance of greater employment opportunities for Negroes and the utilization of the full productive capacity of the community were important social objectives to which the State must address itself. Legislation prohibiting labor union discrimination offered one obvious approach.

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[12] *Id.* at 45, 46, 47.

The problem existed with reference to all types of employment within the State. It was not restricted to enterprise of exclusively local character or to unions of employees working for private persons. Economic and social dislocation, local disorders and the impoverishment of minority groups resulted as much from practices of unions whose members were engaged in interstate commerce or employed by government as from the practices of any other unions. Indeed, the most recent responsible study of union racial practices shows such unions among the most serious offenders:

"At least fourteen American unions specifically exclude Negroes from membership by provisions to that effect in either their constitutions or their rituals. . . .

"To summarize the above in tabular form:

"I. Union which exclude Negroes by provision in ritual:

Machinists, International Association of (AFL)

II. Unions which exclude Negroes by provision in constitution:

A. AFL Affiliates

Airline Pilots' Association
Masters, Mates and Pilots, National Organization
Railroad Telegraphers, Order of *Railway Mail Association* (italics added)
Switchmen's Union of North America
Wire Weavers' Protective Association, American

B. Unaffiliated Organizations

Locomotive Engineers, Brotherhood of
Locomotive Firemen and Enginemen, Brotherhood of
Railroad Yardmasters of America
Railroad Yardmasters of North America

Railway Conductors, Order of
Train Dispatchers' Association, American.[13]

It is noteworthy in this connection that although appellant denies being a "labor organization" it has voluntarily become an "affiliate" of the American Federation of Labor. Its activity in the field of labor relations, as conventionally defined, is noted in the opinion of the Court of Appeals in the present litigation, and the finding of that court as to the character of the appellant as a "labor organization" within the meaning of the New York statute should be deemed conclusive on this appeal. Moreover, it is stipulated in the Record that "any Appellate Court may consider as exhibits offered by defendants

* * * 'The Black Worker' * * * by * * * Spero and * * * Harris * * * quotations from pages 67-69" (R. 11, 13). The following significant excerpt is from the evidence thus introduced in this case:

> "It appears from the following resolution, adopted by the Illinois branch of the Railway Mail Association, protesting against the appointment of a Negro clerk-in-charge at the Terminal Railway Post Office in Chicago, that the 'high mortality rate among Negro Members' was only a pretext for excluding others in the future:
>
> "Whereas, a colored clerk has been appointed in the Chicago, Illinois, Terminal R. P. O., and
>
> "Whereas, said clerk-in-charge has direct supervision over thirty-three clerks of Caucasian birth; and
>
> "Whereas, this does not create harmonious relations between clerks and clerks-in-charge, nor would it in any other case similar in character, nor can the best interests of the service be obtained under such condition; and
>
> "Whereas, we believe that no colored clerk-in-charge can supervise the work of clerks of Caucasian

[13] See Northrup, *op. cit. supra* note 3, at 2, 3-4.

birth to best advantage, nor to the best welfare of the employees, therefore be it

"Resolved, That the Illinois Branch Sixth Division R. M. A., in regular session assembled vigorously protest this assignment or any future assignment of a (Negro) clerk-in-charge who will have direct supervision over a crew any of whom are of Caucasian birth.

"This branch was not unique in its stand. Other branches protested similar appointments."

Thus the appellant is revealed not only to be functioning as a traditional labor organization, but also to be employing its representative authority and power to induce the officers of the Postal Service to discriminate against Negroes.

In such circumstances the legitimate and important public purpose of Section 43 can be achieved only by requiring appellant to obey its mandate. Appellant's voluntary acts have made such application of Section 43 both reasonable and necessary. Indeed, any exception in favor of appellant would be arbitrary and unreasonable.

IV.

Trend of Legislation and Adjudication in Other States as Additional Indicia of Reasonableness.

While not in themselves decisive of the Constitutional issues raised by appellant, recent legislation and judicial decisions in states other than New York comprehensively striking down arbitrary discrimination in membership by labor unions, strongly indicate that Section 43 is in line with enlightened judgment throughout the nation as to the social

dangers of union discrimination and the propriety and reasonableness of its prohibition by state action.[14]

Chapter 265 of the Kansas Acts of 1941 forbids labor organizations which exclude persons from membership because of race or color from acting as a collective bargaining representative in that state. Chapter 96 of the Nebraska Acts of 1941 approaches the problem somewhat differently by prohibiting representatives of labor from racial discrimination in collective bargaining. Pennsylvania, by force of Chapter 294 of the Acts of 1937, denies the protection of the State Labor Relations Act to all unions which restrict membership because of race, creed or color. Chapter 57 of the Wisconsin Laws of 1939 requires the termination of any closed shop agreement if the union arbitrarily restricts membership.

Several State courts have considered it a proper exercise of judicial power to restrain arbitrary discrimination in union membership which has damaged a complainant, even without legislative declaration of policy. The most recent and carefully reasoned of these decisions, *James* v. *Marinship Corporation*, S. F. No. 17,015, was decided by the Supreme Court of California in January, 1945, but has not yet been officially reported. Summarizing the views of other State courts and indicating its own, the California court there said:

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[14] Federal policy indicates the same trend in responsible official judgment. By express provision of Executive Order Number 9346, dated May 27, 1943, the President has prohibited "labor organizations" in "war industries" from discrimination in "union membership because of race, creed, color of national origin." During the 78th and 79th Congresses committees of both Houses reported favorably on legislaton prohibiting union discrimination which burdens interstate commerce. See Senate Report No. 1109, 78th Congress, *2nd Session*, and House Report No. 187, 79th Congress, *1st Session*.

"Some courts have held that state legislation is necessary in order to announce a public policy restricting a union's right to arbitrarily exclude individuals from membership although as a result thereof excluded persons are unable to find employment in their chosen trade. (See for example, Miller v. Ruehl, 166 Misc. 479, 2 N. Y. S. 2d 894; Murphy v. Higgins, 12 N. Y. S. 2d 913.) As said hereinbefore, however, other authorities have indicated that the courts without statutory aid, may restrain such conduct by a union on the ground that it is tortious and contrary to public policy. Further, as said in 4 Restatement, Torts, page 136, comment on section 794: 'The expression of public policy is not confined to legislation and criminal law; in passing upon the propriety of an object (of concerted labor action), public policy otherwise defined is an important factor. If the object is an act against which the law has definitely set its face, it is not a proper object of concerted action.' "

The New Jersey Chancellor, in *Cameron* v. *International Alliance of Theatrical Stage Employees*,[15] enjoined the enenforcement of union rules, arbitrarily discriminatory against certain members. The Maryland Court of Appeals, in *Lucke* v. *Clothing Cutters Assembly*,[16] approved an award of substantial damages to a worker arbitrarily denied admission to a union with the consequence that he lost his job. An Ohio decree, in *Wills* v. *Local No. 106*,[17] restrained a union from picketing for the discharge of Negro employees whose applications for union membership it had arbitrarily rejected. The American Law Institute, in its Restatement

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[15] 118 N. J. Eq. 11, 176 Atl. 692 (1935) *cert. denied*, 298 U. S. 659.

[16] 77 Md. 396, 26 Atl. 505 (1893).

[17] 26 Ohio N. P. (N. S.) 435.

of the Law of Torts, Section 810, has found the law to be that "workers who in concert procure the dismissal of an employee because he is not a member of a labor union . . . are . . . liable to the employee if, but only if, he desires to be a member of the labor union but membership is not open to him on reasonable terms."

The underlying concept of public policy upon which courts have proceeded in this entire line of decisions has recently been stated by the New Jersey Chancellor in *Carroll* v. *Local No. 269*:[18]

> "A voluntary union should be one in which a law-abiding individual of good moral character, possessing the essential qualifications of his trade, can enter upon compliance with rules and by-laws reasonably appropriate for the stability and usefulness of the association. Autocracy is no less inimical to our American ideals if practiced by many rather than by one. Since 1890 we have regarded labor unions as voluntary associations. Let them in reality continue to be such."

As the urgent need for governmental restraint of racial discrimination by labor unions thus impresses itself upon increasing numbers of State courts and legislatures, the burden on those who deny that this is a proper State function becomes heavier.

V.

Relation of Section 43 to Federal Authority.

It cannot rationally be argued that employees of the Postal Service are "federal instrumentalities," and certainly it cannot be argued that appellant, a private cor-

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[18] 31 Atl. (2d) 223, 225 (N. J. 1943).

poration, with entity distinct from its members, is such an instrumentality. Yet, it appears to be appellant's contention that any regulation of its conduct is an unconstitutional interference with a Federal function. But this argument would also strike down State income taxation in its application to salaries of postal employees, or local traffic regulations in their application to postal employees, or State insurance laws in so far as they might affect mutual companies insuring postal employees.

The answer to appellant's contention is to be found in the settled principle that "the exercise by the State of its police power, which would be valid, if not superseded by Federal action, is superseded only where the repugnance or conflict is so 'direct and positive' that the two acts cannot 'be reconciled or consistently stand together' ", as restated with extended review of earlier authorities by Mr. Chief Justice HUGHES in *Kelly* v. *Washington*,[19] This Court has recently applied that principle in *Allen-Bradley Local, etc.* v. *Wisconsin Employment Relations Board*,[20] to a Wisconsin regulation of labor disputes admittedly within the area of Federal control under the National Labor Relations Act, reasoning that since state and federal regulations "as focused in this case can stand together, the order of the state Board must be sustained under the rule which has long obtained in this court."

The application of Section 43 to appellant in this case, far from impeding any exercise of federal authority, implements federal policy and requirements as declared by the

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[19] 302 U. S. 1, 10 (1937).

[20] 315 U. S. 740, 751 (1941). Cf. *Carpenters and Joiners Union* v. *Ritters Cafe*, 315 U. S. 722 (1941); *Milkwagon Drivers Union* v. *Meadowmoor Dairies*, 312 U. S. 287 (1940).

President in Executive Order Number 9346, dated May 27, 1943:

> "I do hereby reaffirm the policy of the United States that there shall be no discrimination in the employment of any person in war industries *or in Government* by reason of race, creed, color, or national origin, and I do hereby declare that it is *the duty of all employers, including the several Federal departments and agencies, and all labor organizations*, in furtherance of this policy and of this Order, *to eliminate discrimination* in regard to hire, tenure terms or conditions of employment, *or union membership* because of race, creed, color, or national origin." (Italics added.)

That such policy of the national sovereign is a matter not of discretion, but rather of constitutional necessity is an implicit premise of this Court's decision at the present Term in *Steele* v. *Louisville & Nashville Ry. Co.*,[21] and expressly stated in the concurring opinion of Mr. Justice MURPHY:

> "The Constitution voices its disapproval whenever economic discrimination is applied under authority of law against any race, creed or color. A sound democracy cannot allow such discrimination to go unchallenged. Racism is far too virulent today to permit the slightest refusal in the light of a Constitution that abhors it, to expose and condemn it wherever it appears in the course of a statutory interpretation."[22]

In such circumstances there can be not even semblance of conflict between the state and the United States as a result of the application of Section 43 to appellant.

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[21] 65 Sup. Ct. 226 (1944).

[22] *Id.* at 235.

Conclusion.

Appellant's contention that its Constitutional rights have been infringed is groundless. The appeal should be dismissed.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

No. 691.—October Term, 1944.

Railway Mail Association, Appellant,
vs.
Edward S. Corsi, as Industrial Commissioner of the State of New York, et al.

Appeal from the Supreme Court of the State of New York.

[June 18, 1945.]

Mr. Justice Reed delivered the opinion of the Court.

The appellant, Railway Mail Association, questioned the validity of Section 43, and related Sections 41 and 45, of the New York Civil Rights Law which provide, under penalty against its officers and members, that no labor organization shall deny a person membership by reason of race, color or creed, or deny to any of its members, by reason of race, color or creed, equal treatment in the designation of its members for employment, promotion or dismissal by an employer.[1] Appellant contended that it was not a "labor organization" subject to these sections, and that if

[1] Section 43 of the New York Civil Rights Law, N. Y. Consol. Laws, ch. 6, provides:

"As used in this section, the term 'labor organization' means any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining, or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection. No labor organization shall, hereafter, directly or indirectly, by ritualistic practice, constitutional or by-law prescription, by tacit agreement among its members, or otherwise, deny a person or persons membership in its organization by reason of his race, color or creed, or by regulations, practice or otherwise, deny to any of its members, by reason of race, color or creed, equal treatment with all other members in any designation of members to any employer for employment, promotion or dismissal by such employer."

Section 41 of the law, prescribing the penalties for violations of Section 43, provides:

". . . any officer or member of a labor organization, as defined by section forty-three of this chapter, or any person representing any organization or acting in its behalf who shall violate any of the provisions of section forty-three of this chapter or who shall aid or incite the violation of any of the provisions of such section shall for each and every violation thereof be liable to a penalty of not less than one hundred dollars nor more than five hundred dollars, to be recovered by the person aggrieved thereby . . . and such officer or member of a labor organization or person acting in his behalf, as the case may be shall, also, for every such offense be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one

they were held to apply to it, they violated the due process and equal protection clauses of the Fourteenth Amendment of the federal Constitution and were in conflict with the federal power over post offices and post roads. Article I, Section 8, Clause 7, of the federal Constitution. The New York Court of Appeals rejected these contentions.[2] On appeal to this Court, consideration of the question of jurisdiction was postponed to the hearing on the merits for determination of whether the case presented a "case or controversy" within the meaning of the federal Constitution. The jurisdiction of this Court rests on Section 237(a) of the Judicial Code.

The appellant, Railway Mail Association, a New Hampshire corporation, is an organization with a membership of some 22,000 regular and substitute postal clerks of the United States Railway Mail Service. It has division and branch associations, thirteen of such branch associations being located in different parts of New York. Article III of appellant's constitution limits membership in the association to eligible postal clerks, who are of the Caucasian race, or native American Indians.[3] Certain officers and members of one of appellant's branch associations raised the question of the validity of Article III of appellant's constitution with the appellee, the Industrial Commissioner of the State of New York, who was charged with enforcement of Section 43. Faced with the threat of enforcement of the statute against it, the appellant filed suit against the Industrial Commissioner in a state court for a declaratory judgment to determine the validity of Section 43, and related provisions, and for an injunction restraining its enforcement against the appellant. A state Supreme

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hundred dollars nor more than five hundred dollars, or shall be imprisoned not less than thirty days nor more than ninety days, or both such fine and imprisonment."

Section 45 of the same law provides:

"The industrial commissioner may enforce the provisions of sections forty-three . . . of this chapter. For this purpose he may use the powers of administration, investigation, inquiry, subpoena, and hearing vested in him by the labor law; he may require submission at regular intervals or otherwise of information, records and reports pertinent to discriminatory practices in industries."

[2] Railway Mail Association v. Corsi, 293 N. Y. 315.

[3] Constitution, Railway Mail Association, 1941-43, Article III, provides:

"Any regular male Railway Postal Clerk or male substitute Railway Postal Clerk of the United States Railway Mail Service, who is of the Caucasian race, or a native American Indian, shall be eligible to membership in the Railway Mail Association."

Court entered judgment for the appellant finding that it was not a "labor organization" as defined in Section 43 of the state statute.[4] On appeal to the Appellate Division, this judgment was reversed, the appellate court finding that appellant was covered by Section 43 and that Section 43 as applied to appellant did not violate the federal Constitution.[5]

On appeal to the New York Court of Appeals, the judgment against the appellant was affirmed. The Court of Appeals noted that appellant's constitution provided that one of the objects of the association was to enable railway postal clerks "to perfect any movement that may be for their benefit as a class or for the benefit of the Railway Mail Service. . . . .";[6] that the Industrial Secretary of the Association[7] was to assist in the presentation of grievances pertaining to service conditions and endeavor to secure adjustment of such through administrative action.[8] It was pointed out that appellant was affiliated with the American Federation of Labor and that the appellant was designated a "labor union" in the Bulletin of the United States Department of Labor as well as in various trade union publications and reports. Appellant's own publications claimed credit for bringing "to every railway postal clerk many material benefits" and "many additional millions of dollars brought to the pockets of railway postal clerks each year by the efforts of the Association," and pointed out that "Reforms always come as a result of demands from the worker. If better conditions are worth securing, they must come as result of organized effort."[9] In the light of this evidence, the Court of Appeals held appellant to be a "labor organization" as defined in Section 43. As heretofore stated, it rejected appellant's con-

[4] Railway Mail Association v. Murphy, 180 Misc. 868.

[5] Railway Mail Association v. Corsi, 267 App. Div. 470.

[6] Constitution, Railway Mail Association, 1941-43, Article II, provides:

"The object of this Association is to conduct the business of a fraternal beneficiary association for the sole benefit of its members and beneficiaries, and not for profit; to provide closer social relations among railway postal clerks, to enable them to perfect any movement that may be for their benefit as a class or for the benefit of the Railway Mail Service and make provision for the payment of benefits to its members and their beneficiaries in case of death, temporary or permanent physical disability as a result of accidental means."

[7] The Industrial Secretary also has a duty under appellant's constitution, Article VII, Section 3(4), to represent members before the United States Employees' Compensation Commission.

[8] *Ibid.*, Article VII, Section 3(3).

[9] Railway Mail Association v. Corsi, 293 N. Y. 315, 320.

tentions that the statute, as applied to it, violated the federal Constitution.

Prior to consideration of the issues, it is necessary to determine whether appeal from this state court declaratory judgment proceeding presents a justiciable "case or controversy" under Sections 1 and 2 of Article III of the federal Constitution. We are of the opinion that it does. The conflicting contentions of the parties in this case as to the validity of the state statute present a real, substantial controversy between parties having adverse legal interests, a dispute definite and concrete, not hypothetical or abstract. Legal rights asserted by appellant are threatened with imminent invasion by appellees and will be directly affected to a specific and substantial degree by decision of the questions of law.[10] *Nashville, C. & St. L. Ry.* v. *Wallace*, 288 U. S. 249, 261-62. See *Aetna Life Ins. Co.* v. *Haworth*, 300 U. S. 227, 242; *Currin* v. *Wallace*, 306 U. S. 1, 9; *Gibbs* v. *Buck*, 307 U. S. 66, 76-77; *Maryland Casualty Co.* v. *Pacific Coal & Oil Co.*, 312 U. S. 270, 272-73; *Tennessee Coal Co.* v. *Muscoda Local*, 321 U. S. 590, 592. Cf. *Pierce* v. *Society of Sisters*, 268 U. S. 510.

Appellant first contends that Section 43[11] and related Sections 41 and 45 of the New York Civil Rights Law, as applied to appellant offends the due process clause of the Fourteenth Amendment as an interference with its right of selection to membership and abridgment of its property rights and liberty of contract. We have here a prohibition of discrimination in membership or union services on account of race, creed or color. A judicial determination that such legislation violated the Fourteenth Amendment would be a distortion of the policy manifested in that amendment which was adopted to prevent state legislation designed to perpetuate discrimination on the basis of race or color. We see no constitutional basis for the contention that a state cannot protect workers from exclusion solely on the basis of race, color or creed by an organization, functioning under the protection of

[10] One of the appellant's branch associations attempted to admit into its membership persons not of the Caucasian race. Appellant denied such applicant's membership whereupon state officials charged with the enforcement of Section 43, on complaint by certain interested parties, asserted the applicability of that law to appellant; the invalidity of Article III of appellant's constitution and prepared to invoke substantial statutory penalties for failure to comply with Section 43. Appellant asserts the invalidity of the statute and is faced with either violating its own constitution or a state statute.

[11] See note 1, *supra*.

the state, which holds itself out to represent the general business needs of employees.[12]

To deny a fellow-employee membership because of race, color or creed may operate to prevent that employee from having any part in the determination of labor policies to be promoted and adopted in the industry and deprive him of all means of protection from unfair treatment arising out of the fact that the terms imposed by a dominant union apply to all employees, whether union members or not. In their very nature, racial and religious minorities are likely to be so small in number in any particular industry as to be unable to form an effective organization for securing settlement of their grievances and consideration of their group aims with respect to conditions of employment. The fact that the employer is the Government has no significance from this point of view.[13]

Appellant's second ground for attack on the validity of Section 43, and related provisions, is that equal protection of the laws is denied to it by the section. Appellant rests its argument on the fact that Article 20 of the New York Labor Law,[14] conferring certain rights on employees and labor organizations with respect to organization and collective bargaining, excludes from the operations of its provisions labor organizations, such as the appellant, whose members are "employees of the state,"[15] while Section 43 includes the appellant in the definition of "labor organizations" subject to its provisions.[16] Appellant thus contends that the state could not classify appellant so as to be subject to Section 43 and deny it the benefits of the provisions of Article 20; that the state's failure to extend Article 20 to include the appellant denies it equal protection. A state does not deny equal protection because it regulates the membership of appellant but fails to extend to organizations of government employees provisions relating to collective bargaining. Under customary practices government employees do not bargain collectively with their em-

[12] See Steele *v.* Louisville & N. R. Co., 323 U. S. 192; Tunstall *v.* Brotherhood of Locomotive Firemen, 323 U. S. 210; Thomas *v.* Collins, 323 U. S. 516, 532.

[13] See 5 U. S. C. § 652, 37 Stat. 555; discussed *infra*, p. 7.

[14] New York State Labor Relations Act. N. Y. Consol. Laws, Ch. 31, Art. 20, §§ 700-716. This statute creates a state labor relation board and contains provisions in aid of employee's rights to organize and bargain collectively with their employers.

[15] N. Y. Consol. Laws, ch. 31, § 715.

[16] See note 1, *supra*.

ployer. The state may well have thought that the problems arising in connection with private employer-employee relationship made collective bargaining legislation more urgent and compelling than for government employees. Cf. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 46.

There remains to be considered the appellant's third contention: that Section 43, and related provisions, are repugnant to Article I, Section 8, Clause 7, of the federal Constitution which confers on Congress the authority over postal matters; that Section 43 constitutes an invasion of this field over which Congress has exclusive jurisdiction and constitutes an attempt to regulate a federal instrumentality. Government immunity from state tax and regulatory provisions does not extend beyond the federal government itself and its governmental functions. In the regulation of its internal affairs, the state inevitably imposes some burdens on those dealing with the national government of the same kinds as those imposed on others. *Penn Dairies* v. *Milk Control Commission*, 318 U. S. 261, 270. Section 43 does not impinge on the federal mail service or the power of the government to conduct it. It does not burden the government in its selection of its employees or in its relations with them. Nor does it operate to define the terms of that federal employment or relate to any aspect of it. Section 43 is confined in its application to a purely private organization deriving no financial or other statutory support or recognition from the federal government and which in no way acts as an instrumentality of the federal government in performance of its postal functions. The operation of the mails is no more affected by this statute than by a state law requiring annual meetings, or the election of officers by secret ballot, or by a state insurance regulation applicable to appellant's fraternal benefit activities. The decided cases which indicate the limits of state regulatory power in relation to the federal mail service involve situations where state regulation involved a direct, physical interference with federal activities under the postal power or some direct, immediate burden on the performance of the postal functions. *Johnson* v. *Maryland*, 254 U. S. 51, 57; *Price* v. *Pennsylvania Railroad Co.*, 113 U. S. 218, 222; *Martin* v. *Pittsburg & Lake Erie R. R.*, 203 U. S. 284, 292-93. See *Ex parte Jackson*, 96 U. S. 727, 732; *In re Rapier*, 143 U. S. 110, 133. And in at least one instance this Court has sustained direct state interference with transmission of the mails where the slight public inconvenience arising therefrom was felt to be far outweighed by inconvenience

to a state in the enforcement of its laws which would have resulted from a contrary holding. *United States* v. *Kirby*, 7 Wall. 482, 486.

Appellant also argues that the various federal statutes regulating the terms and conditions of employment of railway mail clerks indicates an intent on the part of Congress to completely occupy the field of regulation applicable to federal postal employees and their labor organizations.[17] Especial reliance is placed on Section 652, Title 5, U. S. C., 37 Stat. 555, which provides that "Membership in any . . . organization of postal employees not affiliated with any outside organization imposing an obligation or duty upon them to engage in any strike, or proposing to assist them in any strike, against the United States, having for its objects, among other things, improvements in the condition of labor of its members, including hours of labor and compensation therefor and leave of absence . . . or the presenting by any such person or groups of persons of any grievance or grievances to the Congress . . . shall not constitute or be cause for reduction in rank or compensation or removal . . . from said service." The language of this provision indicates that it had the narrow purpose of prohibiting discrimination against a federal employee because of membership in an organization of employees which did not impose an obligation to strike against the government. This provision can hardly be deemed to indicate an intent on the part of Congress to enter and completely absorb the field of regulation of organizations of federal employees. Congress must clearly manifest an intention to regulate for itself activities of its employees, which are apart from their governmental duties, before the police power of the state is powerless. *Allen-Bradley Local* v. *Wisconsin Employment Relations Board*, 315 U. S. 740, 749, and cases cited. There is no such clear manifestation of Congressional intent to exclude in this case. Nor are we called upon to consider whether Congress, in the exercise of its power over the post offices and post roads, could regulate the appellant organization. Suffice it to say, that we do not find it to have exercised such power so far and thus regulation by the states is not precluded.

The judgment is

Affirmed.

Mr. Justice RUTLEDGE concurs in the result.

[17] 39 U. S. C. §§ 601-640.

The Railway Mail Association is a union of railway clerks. To operate as a union in New York it must obey the New York Civil Rights Law. That law prohibits such an organization from denying membership in the union by reason of race, color or creed, with all the economic consequences that such denial entails.

Apart from other objections, which are too unsubstantial to require consideration, it is urged that the Due Process Clause of the Fourteenth Amendment precludes the State of New York from prohibiting racial and religious discrimination against those seeking employment. Elaborately to argue against this contention is to dignify a claim devoid of constitutional substance. Of course a State may leave abstention from such discriminations to the conscience of individuals. On the other hand, a State may choose to put its authority behind one of the cherished aims of American feeling by forbidding indulgence in racial or religious prejudice to another's hurt. To use the Fourteenth Amendment as a sword against such State power would stultify that Amendment. Certainly the insistence by individuals on their private prejudices as to race, color or creed, in relations like those now before us, ought not to have a higher constitutional sanction than the determination of a State to extend the area of non-discrimination beyond that which the Constitution itself exacts.